IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 135

ORGANIZATION FOR A BETTER AUSTIN, et al.,

Petitioners,

vs.

JEROME M. KEEFE,

Respondent.

On Writ of Certiorari to the Appellate Court of Illinois, First District.

INDEX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Oct. 4, 1967—Plaintiff Keefe's original complaint for injunctive relief filed in the Circuit Court of Cook County, Illinois.

Oct. 11, 1967—Defendants' original answer to complaint for injunctive relief filed.

Oct. 16, 1967—Plaintiff's amended complaint for injunction filed.

Nov. 3, 1967—Defendants' answer to amended complaint for injunction filed.

Nov. 3, 1967—Evidentiary hearing on plaintiff's motion for a temporary injunction.

Dec. 20, 1967—Temporary injunction order entered enjoining defendants from passing out literature of any kind and from picketing anywhere in the City of Westchester, Illinois.

Jan. 8, 1968—Defendants' notice of interlocutory appeal to the Supreme Court of Illinois filed.

Mar. 14, 1968—Case ordered transferred to the Appellate Court of Illinois, First District by the Supreme Court of Illinois.

Sept. 29, 1969—Opinion and affirming order of the Appellate Court of Illinois, First District filed.

Oct. 27, 1969—Order entered granting defendants' motion for leave to file a petition for rehearing instanter.

Oct. 30, 1969—Order entered denying defendants' petition for rehearing and modifying the opinion of the Appellate Court previously filed on September 29, 1969.

Dec. 4, 1969—Defendants' petition for appeal as a matter of right and in the alternative petition for leave to appeal to the Supreme Court of Illinois filed.

Jan. 27, 1970—Order of the Supreme Court of Illinois denying defendants' petition for leave to appeal.

[C29] State of Illinois } SS
County of Cook }

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department Chancery Division

JEROME M. KEEFE,
Plaintiff

vs.

ORGANIZATION FOR A BETTER AUSTIN, WILLIAM HOLMES, JUSTIN M. MCCARTHY, and KATHY METROPOULOS,
Defendants

No. 67 CH 5357

AMENDED COMPLAINT FOR INJUNCTION
[Filed Oct. 16, 1967]

Now comes the plaintiff, Jerome M. Keefe, and filing his amended complaint herein, states as follows:

1. That the plaintiff is a real estate broker, licensed to do business in the City of Chicago and the State of Illinois under the name of "Jerry's Real Estate", and he is engaged in the business of acting as a broker for the purchase and sale of real estate.

2. That the defendant, Organization For A Better Austin, is an organization located in the section of Chicago commonly known as "Austin", and William Holmes, Justin M. McCarthy and Kathy Metropoulos, are active members of said Organization.

3. That the said defendant, Organization For A Better Austin, by and through its agents, officers and servants, together with William Holmes, Justin M. McCarthy and Kathy Metropoulos, indicated an express displeasure with the manner in which the plaintiff conducted his real estate business, by [C30] accusing him of being a block-buster (selling real estate to one Negro family and then frightening the other property owners in the neighborhood

whereby they became panicky and began to offer their property for sale through the plaintiff's real estate office), which course of conduct on the part of the defendants commenced on or about August 15, 1967 and continued through October 1, 1967, and still continues, without any justifiable cause, reason or excuse.

4. That from September 9, 1967 to September 30, 1967, the defendant, and a group of individuals, all members of the said Organization For A Better Austin, began to assemble in front of the plaintiff's place of business at 214 South Laramie St., Chicago, Illinois, and began to picket and distribute circulars critical of the plaintiff and his real estate business; they distributed literature throughout the neighborhood and community criticizing him and impugning his reputation as an honest and law-abiding operator of a real estate business, and attacked the business tactics employed by the plaintiff, who has at all times been honest and beyond reproach.

5. That the conduct of the defendants herein, individually and as a group, has invaded the privacy of plaintiff herein, without any justifiable cause, reason or excuse.

6. That the defendants, individually and collectively, will ruin and destroy the plaintiff's business and his means of livelihood by their malicious, wrongful, contriving and designing conduct, and that said plaintiff has no adequate remedy at law to restrain them from so doing.

[C31] 7. That the Austin neighborhood is now in the process of a transition and in a state of change, which was not brought about by the conduct and attitude of the plaintiff herein, who at all times is not restricting his sales primarily to Negro people, but will sell to any person who is willing to purchase real estate in the neighborhood at a fair and reasonable price, and the plaintiff herein is not discriminating as to selling prices quoted to any of his prospects.

8. That the plaintiff is not engaged in "panic selling"; that his advertising is in the local newspapers, and further that the plaintiff is not intimidating nor cajoling anyone in the neighborhood in to selling their real estate by telling them that if they do not sell that the value of their property will depreciate substantially.

9. That if the defendants continue in their wrongful acts, the harm to the plaintiff will be irreparable; that he will suffer substantial monetary losses as a result of the wrongful conduct of these defendants as hereinabove set forth.

Wherefore, plaintiff prays:

A. That the Court order the People's Writ of Injunction to issue, without bond, to the defendants, restraining and enjoining the defendants, individually and collectively, from picketing his place of business and his home; from distributing derogatory pamphlets or literature reflecting upon plaintiff's good name and his business practices; and from assembling at plaintiff's place of business and holding demonstrations.

B. That he may be granted temporary relief pendente lite, until a final hearing on this Complaint and the answers [C32] thereto by the defendants.

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[C35] ANSWER TO AMENDED COMPLAINT FOR INJUNCTION

[Caption omitted in printing—Filed Nov. 3, 1967]

Now come defendants, Organization for a Better Austin, William Holmes, Justin M. McCarthy and Kathy Metropoulos and for answer to the Amended Complaint for Injunction state as follows:

1. Defendants admit the allegations of paragraph 1 of said Complaint. Defendants further allege that the plain-

tiff's place of business has been located at 214 South Laramie for approximately seven months, and prior to this was located on Cicero Avenue.

2. Defendants admit the allegations contained in paragraph 2 of said Complaint.

3. Defendants admit that they have since some time in August, 1967 expressed their displeasure with the manner in which plaintiff was conducting his real estate business in the Austin area of Chicago. Defendants admit that they have accused the plaintiff of being what is commonly referred to as a "blockbuster" or "panic-peddler," but deny that the definition contained in parentheses in paragraph 3 of said Complaint is an accurate definition of the practices commonly referred to as "blockbusting" or "panic-peddling." Defendants admit that their said displeasure continues, but deny that it is without justifiable cause, reason or excuse.

[C36] 4. Defendants admit that on some days during the month of September, 1967, some of them picketed in front of plaintiff's place of business and distributed circulars critical of the manner in which plaintiff was conducting his real estate business in the Austin neighborhood.

On the assumption that "the neighborhood and community" referred to in the second half of paragraph 4 of the said Complaint is that of Westchester, Illinois, where plaintiff resides, defendants answer as follows:

Defendants admit that on September 9, 1967, some of them arrived at the home of the plaintiff but defendants further allege that they called at plaintiff's house for the purpose of meeting with him to discuss certain real estate activities in Austin which defendants find objectionable and destructive of the Austin area as a stable integrated community. When defendants arrived at the home of the

plaintiff, the plaintiff was not home but plaintiff's wife was there. Plaintiff was then contacted and a meeting was arranged between plaintiff and the defendants for that afternoon and said meeting was held at St. Thomas Aquinas Church, 5112 West Washington, Chicago, Illinois. At this meeting defendants discussed with plaintiff the real estate activities in Austin which defendants found objectionable and requested an agreement from plaintiff that he would cease and desist from said activities. Specifically the plaintiff was asked to cease soliciting the sale of property in the community of Austin; he was asked to show property in the Austin area to white as well as Negro buyers; and he was asked to make his housing listings available to the defendants' housing referral committee so that qualified buyers and renters could be located by the defendants for plaintiff's listings. The plaintiff refused to sign this agreement. After this meeting the defendants and other individuals distributed to some residents of homes in the neighborhood where plaintiff resides, mimeographed sheets containing critical descriptions of the manner in which plaintiff was conducting his real estate business in the Austin area of Chicago. Defendants admit that on September 16, 1967, September 30, 1967 and October 22, 1967, some of them distributed to some residents of homes in the neighborhood where plaintiff resides, mimeographed sheets containing critical descriptions of the manner in which plaintiff was conducting his real estate business in the Austin area, and that some defendants [C37] distributed the said mimeographed sheets in the area around the church of which plaintiff is a parishioner on September 17, 1967 and October 22, 1967. Defendants deny the remaining allegations of paragraph 4 of the said Complaint.

5. Defendants deny all the allegations contained in paragraph 5 of said Complaint.

6. Defendants deny all the allegations contained in paragraph 6 of said Complaint.

7. Defendants admit that the racial composition of the Austin neighborhood is now in a state of flux. Defendants further state that the Organization for a Better Austin is an organization of concerned citizens devoted to the goal of peaceful and stable integration in the Austin area, and for the maintenance of a quality community with quality schools and civic pride. Defendants deny that plaintiff is not restricting his sales primarily to Negroes. Having insufficient information on which to base a belief, defendants neither admit nor deny the remaining allegations of paragraph 7 of said Complaint but demand strick proof thereof.

8. Defendants deny that plaintiff is not engaged in "panic-selling". Defendants admit that plaintiff advertises in local newspapers but deny that that is the only type of advertising or solicitation in which he engages. Having insufficient evidence on which to base a belief defendants neither admit nor deny the remaining allegations of paragraph 8 of said Complaint but demand strict proof thereof.

9. Defendants deny the allegations of paragraph 9 of said Complaint.

10. Further answering said Complaint, defendants state that the activities made the subject of said Complaint were engaged in to protest certain practices, specifically those commonly referred to as "blockbusting" and "panic-peddling," carried on by plaintiff in the conduct of his real estate business in the Austin area of Chicago. These practices, exhibited in the form of solicitation of the sale of homes owned by residents who have expressed no intention to sell their homes or to move

from the neighborhood and further expressed by statements designed and calculated to arouse and excite the fears and prejudices of those living in or owning property in the Austin neighborhood, conflict with the public policy of the state of Illinois as expressed by H. B. 1179 recently passed by the Illinois General Assembly and signed by Governor Kerner (a copy of which is attached as Exhibit A to defendants' Answer to plaintiff's original Complaint for Injunctive Relief and incorporated herein by [C38] reference), and by Chapter 198.7-B of the Municipal Code of Chicago (attached as Exhibit B to defendants' Answer to plaintiff's original Complaint for Injunctive Relief and incorporated herein by reference), and by the Illinois Real Estate Brokers and Agents Act, Section 8-d-11. The gravity of this problem is recognized in a pamphlet published for the benefit of community organizations by the Chicago Commission on Human Relations, an official agency of the city of Chicago (a copy of which is attached as Exhibit C to defendants' Answer to plaintiff's original Complaint for Injunctive Relief and incorporated herein by reference.)

11. Further answering the said Complaint, defendants state than on September 25, 1967, representatives of the Organization for a Better Austin met at the office of the Chicago Commission on Human Relations with representatives of said Commission to file complaints of unfair housing practices against the plaintiff under the Chicago fair housing ordinance. Defendants' representatives met with members of the Chicago Commission on Human Relations on September 28, 1967, at which time a conciliation meeting was scheduled by the Commission for October 4, 1967. On October 4, 1967, defendants' representatives were present; plaintiff did not personally appear, but at the request of plaintiff's attorneys, the meeting was continued

to October 11, 1967, at which time plaintiff was directed to appear. On October 11, 1967, neither plaintiff nor his representatives appeared, and the Commission continued the meeting to October 23, 1967, and directed plaintiff to appear at that time. On October 23, 1967, the plaintiff appeared at the scheduled conciliation meeting and refused to agree to the conciliation terms proposed by either the Commission or the defendants. As a result the Commission has ordered a public hearing, to be held on November 21, 1967.

12. On October 3, 1967 a group met with the Honorable Richard J. Daley, mayor of the City of Chicago, to discuss with him the gravity of the situation in the Austin neighborhood and the conduct of a number of real estate brokers including plaintiff in that neighborhood.

13. Further answering the allegations of said amended Complaint defendants state that the activities that they engaged in were an exercise of the rights of freedom of speech and assembly guaranteed to them by the Constitution of the United States and of the State of Illinois.

[C39] 14. By reason of these facts, defendants deny that plaintiff is entitled to seek court of equity jurisdiction or to obtain injunctive relief against defendants.

Wherefore Defendants Pray:

1. That the said amended complaint for injunctive relief be dismissed and the relief sought therein be denied and that defendants have their costs so wrongfully required to be expended.

2. For such other and further relief as this court shall deem appropriate in the premises.

Organization For A Better Austin

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PLAINTIFF'S EXHIBIT No. 1

Perhaps you would like to know that your neighbor:

JEROME KEEFE
1951 Manchester
Westchester, Illinois
FI 5-3784

Is a panic peddler who has been soliciting in the Austin community with cards like this . . . .

WE INVITE YOUR LISTINGS

We Have Prospective Buyers For Income And Residential Properties In Chicago Areas
We Invite Your Listings
Jerry's Real Estate
214 So. Laramie Ave.
Chicago, Illinois 60644

Jerome M. Keefe 378-8993
Realtor

and:

1. He told numberous people that "I only sell to Negroes."
2. He . . . "was one of the 12 most frequently cited by homeowners in the Southeast Austin for soliciting real estate listings in a racially changing neighborhood."
   Chicago Daily News Dec. 20, 1965
3. He is doing everything he can to make a fast buck in Austin.
4. He has already done this in Lawndale, Garfield Park, and along Cicero Avenue.
5. We thought you would like to know

BECAUSE YOU MAY BE NEXT.

DEFENDANTS' EXHIBIT No. 1

RESIDENTS OF WESTCHESTER BEWARE—

Jerome Keefe
1951 Manchester
Westchester, Illinois
FI 5-3784

Is the real estate broker who operates out of Jerry's Real Estate 214 S. Laramie, Chicago 378-8993. He has been accused of PANIC PEDDLING.

THE REASON WE ARE IN WESTCHESTER TODAY IS THAT—

He has refused to sign an agreement with us stating that he will not solicit in our community.

While on a solicitation call in our community he stated: "I only sell to Negroes."

When asked if he had ever done business in anything but a racially changing neighborhood he said "NO"

WE THE NEGRO AND WHITE RESIDENTS OF AUSTIN DEMAND THAT THIS TYPE OF ACTIVITY STOP.

If you want us to stop coming to Westchester call Jerry Keefe at

FI 5-3784 or 378-8993

and tell him to sign the agreement with the Austin community.

WHEN HE SIGNS WE STAY IN AUSTIN.

DEFENDANTS' EXHIBIT No. 2

RESIDENTS OF WESTCHESTER—

Do the Real Estate Brokers of Westchester harrass you by leafleting your property, phoning you, or ringing your doorbells asking you to sell your property!

Jerome Keefe, your neighbor at 1951 Manchester has been doing it to we the residents of Austin, AND WE ARE SICK OF IT!!!

FOR YOUR INFORMATION—

1. He has been accused of panic peddling.
2. Three times he has refused to sign an agreement with the people of Austin to stop this ILLEGAL SOLICITING in our community.
3. He has stated to a number of people "I only sell to Negroes".
4. He has never done business in anything but a racially changing neighborhood and has openly admitted it to us at a public meeting.
5. You can support us by calling him at FI 5-3784 or 378-9883 and tell him to sign the "NO SOLICITATION AGREEMENT" with the Austin community.

WHEN HE SIGNS THE AGREEMENT
WE STOP COMING TO WESTCHESTER.

DEFENDANTS' EXHIBIT No. 3
[Side 1]

LEN O'CONNOR Thursday, September 21, 1967

When I made a report, recently, about a panic-peddler in Rogers Park—on the North Side of Chicago: the roof caved in.

City and State agencies put the matter under investigation, and that was good. But I was accused—among other things—of being Anti-Real Estate, Anti-American, and Anti-Semitic.

I enter a plea of not guilty on all three charges.

When somebody is trying to rip up a neighborhood by hustling real estate deals with a sales pitch that those people will start moving in, he is asking for trouble and he should get it—regardless of his race, creed, color or religious affiliation.

There is an organization out in Austin—on the far west side of Chicago that seems to share this view. A group called, "Organization for a Better Austin."

Austin is an integrated community, on balance. It is not integrated in fact, because while 14 per cent of the 120 thousand people living there are non-white; the non-whites are gathered in the southeastern corner of the area.

The Organization for a Better Austin is attempting to break the pattern of having the Negro area increase, block by block. The Organization is striving to encourage the movement of non-whites into all white neighborhoods. This, the Organization believes, is the only hope there is for preventing the collapse of Austin into a ghetto.

People living in the northern section of Austin are not sympathetic to the Organization's plan. But 183 individual groups make up the Organization, so it is not without influence.

The Organization for a Better Austin puts the blame for block-busting that completely transformed the south eastern corner of the area from white to black, in the course of only two years upon white real estate sharpies.

By phone, by mail and in person, these real estate creeps have been soliciting property from white home-owners for re-sale to non white buyers. The pitch is that, "I can un-load your house now; but, if you wait, I don't think I'll be able to help you." And—Block by block, the sharpies have created a ghetto.

The Organization for a Better Austin has filed five notarized complaints against the panic peddlers. Four of the five real estate firms have signed agreements that they will cease to solicit homes for re-sale.

The fifth man, who is holding out, is being picketed by white home owners he tried to panic into selling out to him.

There is no way of knowing what the final result of these efforts of the Organization for a Better Austin will be. But their goal is to establish a racially stable community. Only a dollar-hungry real estate man could fault them for that.

And I am Len O'Connor.

[Side 2]

Residents of Westchester—

This is to inform you that Jerry Keefe
1951 Manchester
Westchester, Illinois
FI 5-3784

Who operates Jerry's Real Estate at 214 S. Laramie, Chicago said in a public meeting when asked:

"Have you ever done business in anything but a changing neighborhood?"

"NO"

His solicitation tactics in our community have caused unrest and alarm. On our last visit to Westchester many asked us "Why don't you take legal action against Keefe?" HERE IS OUR ANSWER:

1. We have filed to complaints with the department of Education and Registration with the State of Illinois.
2. We have filed complaints with the Mayor's Commission on Human Relations. They have ruled there is justification for our complaints and have arranged a hearing for Wednesday Oct. 4 at 2:30 p.m. 211 W. Wacker Drive. You might like to be present to learn the out come.
3. We have an appointment with the Honorable Richard J. Daley Tuesday Oct. 3 to discuss this matter.
4. Our Clergy Council has voted its support to us and is joining us in our fight to rid Austin of all panic peddlers.

Calls or Telegrams to the Mayor's Commission on Human Relations

211 W. Wacker Drive
744-4111

urging swift and strong action concerning Jerry Keefe.

[Vol. I of the Transcript of Proceedings]

State of Illinois)
) SS:
County of Cook)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT — CHANCERY DIVISION

Jerome M. Keefe,
Plaintiff,
-vs-
Organization For Better Austin, William Holmes, Justin M. McCarthy & Kathy Metropoulos,
Defendants.
67 CH 5357

Report Of Proceedings, had at the hearing of the above entitled cause before the Honorable Jerome M. Covelli, Judge of said court, on the 3rd day of November, 1967, at ten A.M.

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[2] Mr. Browne: This is a motion for a hearing on the matter of a temporary restraining order pending the present hearing on the case.

A verified complaint was filed here asking for the injunctive relief restraining certain people from congregating in front of a man's place of business, passing out leaflets and pamphlets, ostracizing this man's methods of doing business without any rhyme, reason or foundation and consistent with the statutory changes on preliminary injunctions I am asking that a temporary injunction be issued immediately for ten days.

The Court: Temporary restraining order.

Mr. Browne: I am sorry, temporary restraining order for ten days in conjunction with the changes.

Mr. Long: Your Honor, we actually have two things before us at this moment; one is this motion to strike our bill of particulars and the statement in the notice of motion was sufficient to indicate to us what was intended by the part that was giving us trouble.

We have an answer which we are prepared to file. We are ready for a hearing on the temporary [3] order also.

• • •

JEROME M. KEEFE, a witness called on behalf of the Plaintiff herein, having been first duly sworn, testified as follows:

Direct Examination by Mr. Browne.

Q. Please state your full name? A. My name is Jerome M. Keefe.

Q. Where do you live? A. 1951 Manchester Avenue in Westchester, Illinois.

Q. What is your business or occupation? A. I am presently engaged in real estate at 214 South Laramie Avenue, Chicago.

Q. Are you a licensed real estate broker? [4] A. I have been a broker since about 1961 approximately.

Q. Have long have you been in business and have had an established place of business? A. Since 1961, yes, sir.

Q. You are the plaintiff in this case? A. Yes, I am.

Q. Calling your attention to on or about September 1, 1967, do you know what occurred at your place of business? A. Yes, I do.

Q. Tell us what has occurred? A. Well, I would say—

Q. Not what you would say, Mr. Keefe, what has occurred? A. Yes, sir. On or about September 8, 1967, Mr. Holmes called me at my home.

Q. He's one of the defendants in this case? A. Yes, sir.

Q. Do you know whom he is associated with? A. He's with the real estate practices committee of the O.B.A.

Q. Tell the court what the O.B.A. stands for? A. O.B.A. stands for Organization for Better Austin.

[5] Q. Now, what did they say or do on that day, if anything? A. On that date, Mr. Holmes requested I meet with him the next day or that evening and it was quite late on a Friday evening. So I mentioned I was unable to meet with him, but I would try and meet with him the next day, September 10, 1967 at my office. After he called me, I checked and discovered that they had been to other real estate offices—

Mr. Long: Objection.

Mr. Browne: Forget about it. Let's concentrate about one thing, what was said to you, if anything and what transpired after that, if anything.

The Witness: I did not meet with him. I thought it was too large a group for me as an individual to cope with and I did not meet with them to be very honest with you. We arranged a meeting the next Saturday, at which time I did meet with approximately 200 people in St. Thomas Acquinas hall.

Q. Did you go there and meet with these people at St. Thomas Acquinas— A. Yes, in their parish hall and tried to answer as best I could under the circumstances all the grievances.

[6] Q. Will you name some of the grievances that they complained of, or what they had against you? A. They claimed I was panic selling.

Q. Do you know what panic selling means? A. Panic selling is the levering of a seller, any seller out of a

neighborhood by the introduction of ethnic change or the depression of the oppressed by the introduction of ethnic change.

Mr. Long: Objection, your Honor: We are willing to let that stand, but not as the sole definition.

Mr. Browne: This is his interpretation.

The Court: Over-ruled.

Mr. Browne: Thank you. What else was said, if anything?

The Witness: We had about an hour interview, at which time I attempted as best I could to answer all their questions and the summation of it was that I was asked to sign a pledge which I felt went beyond the existing city and state laws and—

Mr. Browne: Q. Can you disclose the contents of this pledge for us? A. It mentioned that I should not solicit by phone, flyer, visit or mail in the Austin area, that I should [7] cooperate with the Real Estate Practices Committee and furnish listings—

Q. And when you say, I am sorry, when you say they told you to cooperate with the Real Estate Committee, which committee were they referring to, do you know? A. The Real Estate Practices Committee, which I was willing to do.

Q. Who is the Real Estate Practices Committee, do you know? A. Mr. Holmes is the head of it.

Q. And what else? A. I forgot the third point. I am not sure.

• • •

Mr. Browne: Now, what happened after that?

The Witness: After I met with them, I was under the impression that if I did meet with them, that they would stop the harrassment at my house and place of business, but it wasn't true.

Mr. Browne: Q. When you say harrassment, will you tell us what was done to harrass you at your place of business by these people? A. It started the week that I met with them. I [8] would feel it was about September 17th and it included passing out literature right in my own immediate neighborhood, and passing out literature around my office which was disparaging I felt to my name and reputation as a business man.

Q. I show you Plaintiff's Exhibit No. One.

(Whereupon Plaintiff's Exhibit No. One was marked for Identification.)

Can you tell us what that purports to be? A. This is one of the hand outs which was passed throughout my own neighborhood in Westchester.

Q. Do you know that it was passed out in your neighborhood? A. Yes, I do, definitely.

Q. I introduce this, counsel, as evidence. A. I did mention to them at our meeting on September 10th that I was willing to sign a pledge that coincided with the City and State laws.

Mr. Long: That is only his interpretation of it.

Mr. Browne: Can I introduce—At this time, I would like to introduce Plaintiff's Exhibit No. One.

The Court: No objection. Go ahead and proceed.

[9] Mr. Browne: I now show you Plaintiff Exhibit No. Two and ask you if you will tell us what this purports to be? (Whereupon Pl. Ex. No. Two marked for identification.)

The Witness: This is a telegram sent by the Real Estate Practices Committee.

Mr. Browne: Q. When you say Real Estate Practices Committee, what are you referring to? A. This is the

Real Estate Practices Committee of the Organization for Better Austin.

Q. Go ahead. Tell us what it purports to be.

Mr. Long: Excuse me but that looks like a newspaper, not a telegram.

The Witness: Yes. It is a reprint of a telegram which has been taken in total and published in the Westchester news.

Mr. Long: Your honor, we are not in the publishing of newspaper business.

The Court: Over-ruled, go ahead.

Mr. Browne: As you look over at Plaintiff's Exhibit No. Two, will you tell us what that is?

The Witness: I will read it to you.

The Court: No, you cannot read.

Mr. Browne: Just tell us what you see there.

[10] The Witness: This is a newspaper. It is a picture of my office and pickets marching up and down in front of it saying, "He is panic peddling, and panic peddling in our neighborhood must stop, stop him."

Mr. Browne: And do you know how (Strike that) Do you know who put this picture in and how it got there in the paper?

The Witness: This picture was sent I imagine—

Mr. Long: Objection, your Honor.

The Court: Sustained.

Mr. Browne: Tell us not what you imagine but what you know.

The Witness: It is a picture sent by the O.B.A. to the Westchester News for publication.

Mr. Long: Objection.

Mr. Browne: Well, he's telling what—

The Court: With-draw your objection.

Mr. Browne: What is the ruling, your Honor?

The Court: He is to with-draw.

Mr. Browne: Will you tell us what this purports to be and how it got there?

The Witness: It is a picture sent by the O.B.A. [11] to the Westchester News for publication in the Westchester paper.

Mr. Browne: Q. Can you describe the premises there? A. It is my office at 214 South Laramie is in the picture and the picketers are marching in front of it.

Q. Counsel?

Mr. Long: We have no objection to the picture, your Honor. We would like to check the rest of the matter that appears on the newspaper.

The Court: The photographs will be accepted in evidence.

Mr. Long: Very good, your Honor.

The Court: Nothing else will appear at this time unless you can do it later.

• • •

[12-13] • • •

[14] • • • Mr. Browne: Now, have you been guilty of resorting to these practices?

The Witness: I honestly don't feel that I have. I have been cleared by the Department of Registration and Education. I have had a hearing before the Commission of Human Relations.

Mr. Browne: Q. Just tell us whether or not— A. I never have. I never in my life have.

Q. Will you tell us what the condition of the neighborhood of Austin west of the railroad tracks, off Cicero to Laramie and from Congress to Lake Street, what is the neighborhood condition there in that section? [15] A. I would say it is integrated to some extent.

Q. What percentage? A. I have no idea. I am not an expert on percentages.

Q. Is it lightly integrated, heavily integrated or medium integrated? A. I really couldn't say. There are some negroes and some white people in the area.

Q. Now, is it your practice to discriminate and offer your real estate to negroes only or anybody that applies? A. Absolutely not. I have entertained white customers and have gotten depositions from anyone that you want. I have tried hard to sell to white people. It is difficult. I am stating a fact. I don't discriminate. Absolutely not.

Q. Have you made that known to all these people that you do not discriminate? A. Yes. I tried to make it known in our public meeting absolutely. I never stated I sell only to the negro race. I want to correct that misimpression.

Q. You may cross examine him.

[16] *Cross Examination by Mr. Pomerantz.*

Q. Mr. Keefe, you stated you have been in business since 1961 in an established place of business. Where was that place of business? A. Ten South Cicero, sir, for about one year approximately at which time I moved to 113 South Cicero. I was there for four years and since November of 1966 I have been in the office in Laramie and Quincy, which is 214 South.

Q. That is the office that is involved here? A. Yes, sir.

Q. On September 2nd—On August 24th, excuse me, 1967, did you have any conversation with any people in the Organization for Better Austin, the defendants in this complaint? A. If Mrs. Zimpardi is one of the members of the O.B.A., I did have a conversation with her.

Q. She's a member, yes. Do you remember what the occasion for the conversation was? A. Yes, I had distributed cards which had no ethnic overtones—

Q. Objection. [17] A. —in the neighborhood. Mrs. Zimpardi called me at home. In fact, she came to my office and sought out my services as a real estate broker and I did go to her home and look through it, yes, definitely, in answer to her request.

Q. Did you— A. Yes, sir.

Q. Would you describe this card you say you passed out and how you passed it out? A. How?

Q. Where it was passed out. A. It was passed out I would say Laramie to Central generally and from Washington to Lake Street.

Q. From door to door. How would you do this? Did you just walk up and down the street giving anyone who wanted it? A. No. It had two little boys distribute them.

Q. To the doors of the homes? A. Yes.

Q. In those blocks? A. Yes.

Q. Would you describe what the cards said? A. It said in general we invite your listings and [18] it gave our name and address as realtor.

Q. Did these cards go to people who had expressed some intention to sell their home or move from Austin? A. No, sir, it was indiscriminate. It was passed out indiscriminately. We are not selective.

Q. Now, you say that these two boys passed these cards out in several blocks, why these two blocks if the people didn't express any specific intention? What was it that led you to—

Mr. Browne: Objection, counsel is arguing with the witness as to why were you and so forth.

The Court: Overruled. You may ask the question.

Mr. Pomrantz: How did you select the blocks?

The Witness: How did I select—It was indiscriminate. There is no malice.

Mr. Pomerantz: Q. I didn't accuse you of malice. A. It was strictly at random choice and it is a very honest opinion.

Q. Since that time have you distributed these cards in other areas? A. Not since that time, no, sir.

Q. How about before that time, since November of 1966? [19] A. We have distributed them before.

Q. In any sort of pattern or indiscriminately? A. It was at random again.

Q. Would you say all these cards were distributed in the Austin neighborhood? A. Yes, generally in Austin.

Q. Do you remember, Mr. Keefe, when those cards were passed out? A. Prior to Mrs. Zimpardi calling me, which would be—

Q. Several days? A. September, or August 20, roughly, yes.

• • •

Q. You have said that sometime after the 8th of September, people were, people from the O.B.A. were picketing, passing out literature and so forth around [20] your place of business on Laramie Street, is that correct? A. Yes, that's correct.

Q. Would you describe what they did and be as specific as you can about when they did this? A. If our meeting was September 17th, which was A Saturday at St. Thomas Acquinas, the distribution of the literature and picketing commenced at that time in my own Village and has kept up until today's date around my place of business and in my Village.

Q. Could we treat the two different locations of these activities that you are speaking of separately, so you can describe what it is that happened in front of your place of business and then later we will discuss what it is that happened in your home in Westchester. A. In front of

my place of business, which is at 214 South Laramie, there was picketing on numerous evenings. On Saturdays, there was the distribution of literature impugning my name as a business man in the Austin area. Frequent distributions of hand outs commencing on or about—

Q. What do you mean hand outs? [21] A. Hand outs impugning my name with definite adverse information about my reputation as a business man in the Austin Community.

Q. Would you describe the type of activity that took place in Westchester during this same specific period? A. During this period of time commencing September 17, 1967, there was the distribution of the same type of literature in my own immediate home area. The sending of a telegram to the Westchester News attempting I would say to put me in a very bad light for non-proven, I would like to emphasize that, charges in my own area and it commenced September 17th and continued until a very short time ago.

Q. They weren't charging you with activities were they? A. They were charging me with activities in the Austin area, malpractice of real estate in the Austin area.

Q. Now, you mentioned September 16th, I believe, it was the 16th or 17th, that these activities began. Did anything happen prior to that time in Westchester; did anyone come to your home or have anything to do with you? [22] A. Yes, yes. They came to my home and attempted to arrange a meeting which I did go to.

Q. Do you remember when that was? A. It was on the morning of September 17th. I remember it very clearly now. My wife called me.

Q. It was a Saturday or a Sunday? A. Saturday, September 17th.

Q. I think it was the 16th, your Honor. A. I am sorry, that's right.

Q. Just so we don't get it confused.

I apologize your Honor, it was a week earlier, September 9th, just so we get this straightened out. Does that sound right to you? A. It is highly possible.

Q. They came to your home in Westchester to arrange a meeting with you? A. Yes.

Q. And you said you did arrange at the time to meet with these people? A. Yes, I not only arranged it, but met with them.

Q. When was that? A. You are telling me it was the 9th, aren't you?

Q. Was it the same day or a day later? [23] A. The same day.

Q. Did anything happen after that meeting? A. I would say, can I go back a little bit to the meeting itself?

Q. I think you testified that the people presented grievances or something of that sort at the meeting. What happened after the meeting? A. I refused to sign the pledge. After the meeting I went to my Village. Then started the distribution of this highly inflammatory material impugning my reputation as a business man.

Can I retrace for just a second?

The Court: Just answer the question.

Mr. Pomerantz: I would like to go back to this meeting. People came to your home and the meeting was arranged for later in the day at St. Thomas Acquinas. You said already they explained some of their grievances to you about doing business in Austin, is that correct?

The Witness: That's correct.

Mr. Pomerantz: Now, was this a round table meeting or was it just a free flowing discussion? A. It was very

well conducted by Mr. Holmes and [24] Mr. McCarthy. It was very intelligently conducted. They entertained one question at a time. Under the circumstances where I was by myself, I was fort of on the spot you might say, frankly speaking. I feel I answered the questions to the best of my ability.

Q. Did you have an opportunity to say anything you wanted to and asked them questions if you wanted to? A. I felt I was the one that was being asked the questions.

Q. Did you ask any questions of the people? A. Yes.

Mr. Browne: I will object to this line of questioning. I still fail to see the materiality. In what connection, what justification does it give anybody to slander the man and publish these articles in the paper and a picture of his business in the newspaper. Since when does that justify anybody doing that.

Mr. Long: There has been no tie up between the paper and the Organization for Better Austin.

The Court: The paper was put in evidence.

Mr. Long: And secondly, this is a court of [25] equity, your Honor.

The Court: Objection over-ruled.

Mr. Pomerantz: If I may back up a short step then. It was an open type discussion and you could have asked the question. There was no big inquisition, but conversation back and forth trying to answer each others problems?

The Witness: Yes, it was very intelligently handled, that's correct.

Q. And then you said that you refused to sign the agreement, isn't that correct? A. Yes, that's correct. I felt—

Q. Your characterization is already in evidence. If that is your characterization, it is fine. I didn't say we agreed, I said, it is fine.

You refused to sign this document. Who asked you to sign the document? A. Mr. McCarthry. He turned to me and asked me to sign the pledge.

Mr. Browne: Keep your voice up.

The Witness: He said, we have had enough conversation. Now, we want you to sign this pledge and [26] I absolutely and positively refused. It went beyond the Illinois State Laws with the City's Open Housing Laws. Yes.

Mr. Pomerantz: Q. In what way did it go beyond those laws? A. It didn't let me solicit at all which goes beyond the City and State Laws.

Q. When you say solicit, what do you mean? A. When I say solicit, I don't know what your connotation of solicit means, it means I actively seek out a seller.

Q. I am sorry? A. I actively seek out a seller.

Q. How? A. By flyer in this case.

Q. Are there any other ways? A. Yes, phone calls.

Q. Personal visits? A. Personal visits, yes.

Q. To people who have or have not asked you, whichever the case may be, or expressed the desire to sell? A. Yes, that's correct. I have the right to solicit.

[27] Q. Is this the general way you have conducted the real estate business since '61 when you were licensed as a broker? A. Not necessarily, no. A lot of times I got referrals from other sellers. Occasionally I actively solicit, yes.

Q. Did you always have to solicit wherever your business was established; this is the way you go about it? A. Not necessarily, no.

Q. Have you? A. I have solicited in the past, yes. It is within my boundaries.

Q. And your boundaries are determined by generally where your place of office is at? A. By boundaries, I mean City and State laws.

Q. The method—I am talking about geographical area? A. Nothing.

Q. But the geographical area in which you operate is generally determined by where your place of business is located, is that correct? A. Yes. I think that you will find it will apply to [28] any broker in general.

[29] • • • Q. You have mentioned something about being cleared by the Department of Registration. Would you kindly explain what you mean by that? [30] A. Yes, absolutely, I met with them Wednesday morning and the complainant, Mrs. Zimpardi, was there, Rev. Johnson was there. I don't know if it is Father, and who else?

Q. Somebody from the O.B.A.? A. Two representatives from the O.B.A. Mr. Trapp, I believe was one of them.

Q. What was the occasion? A. The occasion was a citation, a complaint signed by Mrs. Zimpardi and filed with the Department of Registration and Education and a hearing officer, Garry Edelman (phoenetic), he heard the case and he concluded there was no panic selling and the case was dropped with the Department of Registration. And the other complainant, Mrs. Andoska (phoenetic) evidently with-drew her complaint and did not appear. Now, her complaint has been dropped also by the Department of Registration. So Mr. Edelman felt there was no panic selling.

Q. What were the people that filed these complaints complaining of? A. Panic selling, if that's a word.

Q. Yes, panic selling. By this procedure, they [31] tried to have the Department take some action? A. Yes.

Q. What action was that? A. They tried to have my license revoked.

Q. As a real estate broker? A. That's correct, in the State of Illinois.

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[32-33] • • •

[34] • • • Q. Now, you have also stated that you absolutely don't discriminate in the sale of homes? A. No, sir, I don't.

Q. I am sorry I have to ask you what you mean by the word discriminate? A. Discrimination means the refusal to sell to any [35] race and as a licensed broker, I really can't do that.

Q. Does it refer as you were using it to any other sort of discrimination? A. You will have to clarify that.

Q. What I am interested in is the practice of not making a home available to everybody, but to discriminate against the clientele, to search and seek out as to the prices? A. My homes are open to any race that wishes to buy and at the same price. I don't discriminate one race with another as far as price, if that is the point you are making.

Q. That's what I was asking.

Your Honor, that's all we would like to ask since this is a hearing for a preliminary injunction, I assume we can reserve the right to recall Mr. Keefe for the full hearing?

The Court: Yes. Are you through with the witness?

Mr. Pomerantz: Yes.

The Court: Do you have any re-direct?

Mr. Browne: No, your Honor.

The Court: You are excused.

[36] JUSTIN McCARTHY, a witness called on behalf of the defendant herein, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pomerantz.

Q. Would you state your name and address? A. Justin McCarthy, 5353 Washington Boulevard, Chicago, Illinois.

Q. Where are you employed, Mr. McCarthy? A. Where I work every day?

Q. Yes. A. Chicago Newspaper Guild.

Q. And what office, if any, do you hold in the organization for Better Austin? A. I am the President.

Q. And how long have you had that position? A. Since June 11th of this year.

Q. And is the job of the President that of the Chief Official of the organization? A. It is.

Q. Now, Mr. McCarthy, would you briefly tell the Court what kinds of activities the organization engages in, what are some of the major problems? [37] Why does this organization exist? A. The Organization exists as a forum and meeting place to an organization of a great number of groups upon which they can discuss the problems of the community and find solutions; also to find resources and ways to implement the solutions.

Simply put, the major problem of the O.B.A. is presently to stabilize the overall Austin community. The organization has committees. One of the most active, if not the most active is the Real Estate Practices Committee of the organization.

It's objective, of course, is to see insofar as it can, that the practices of the activities affecting real estate do not negate the possibility of stabilizing Austin. Two

prime targets of the Real Estate Practices Committee are panic peddlers and slum landloards.

The housing committee of the Organization for Better Austin would be a committee concerned primarily with slum landlords and of course, the Real Estate Practices is concerned with panic peddlers.

We also have an Education Committee which is concerned with the problems of the schools in Austin, [38] the orderly, tranquil, peaceful integration of the schools is possible. The level of the education and the instruction given in our schools, all the problems affecting the Austin schools are related to the problems of stability in Austin and of course this committee is concerned with them.

We have a Youth Committee which is presently active working with youths in the community. They are trying to do what they can in that area.

We have a security Committee which maintains relations with the Police Department and it has to do what it can to keep stability and whatever matters arise out of Austin, which would affect the security, peace, tranquility of Austin. Now, are those enough committees?

Q. That'a an adequate description. Is this organization racially integrated? A. Yes. By racially integrated you mean black and white people and people of all—

Q. Are they all members of the organization? A. Yes, by groups.

Q. Now, you speak of racial problems in Austin, would you give us an idea exactly what you mean by [39] racial problems? Can you be more specific? A. Well—

Q. Relate your remarks especially to housing. A. Well, a major racial problem, of course, is the exodus of white people from the community, which is facing changing conditions. The panic of white people who for one reason or another may be fearful of economic, the loss of prop-

erty values because of the moving into of their neighborhoods of negro people, very simple.

Q. Mr. McCarthy, are you objecting to the entry of negro people into the community? A. No, no.

Q. Then, would you tell the Court what kind of pattern is bothering the organization so much? A. The pattern is a reverse integration, actually. At the southern border of Austin at the moment is an integrated, no, is a segregated community, a black segregated community. The borders of the black segregated community traditionally thus far, up to the borders of Austin, have relentlessly and irresistably moved toward Austin.

Q. What are the boundaries that you are referring to? [40] A. I can say roughly about Cicero Avenue. From there east you could say that is a segregated community. West of there, there is an area of integration in various degrees and further west, let us say, there we will get to the suburbs further west.

Q. When, to your knowledge, did Cicero or when was the last time that Cicero in your opinion would not be a predominately negro area, the area which you bounded at the east by Cicero and coming a few blocks west? A. Would not be the boundary until I would say three, four years approximately. It wasn't integrated as absolutely as it is now. There has been a very radical change in this recent couple years.

Q. Now, Mr. McCarthy, you were in Court when Mr. Keefe said that within the past year, he has changed his office from Cicero Avenue to Laramie. Could you tell us something about the Laramie location in terms of your analysis of the change of the boundary change of the Austin area? A. It is the outpost, it is in advance of the absolutely integrated black part of Austin.

[41] Q. Laramie is further west than Cicero? A. It is a guide on the advance of the frontier we are talking about, this integrated frontier.

Q. Are you saying, it is on the western boundary? A. Yes. It is actually, it is one mile or a mile and a half mile west of Cicero Avenue.

Q. In your experience have the boundaries been coming progressively west, the boundaries of this racial difference? A. Yes, yes.

Q. What kind of a program would you propose, or has your organization proposed for this boundary areas with respect to real estate? A. So that the overall problem can be treated rationally, we think the first things that have to be stopped are the panic peddlers and they are number one, and the second thing that must be stopped is the absentee or the slum landlord present in Austin.

We have to have time to do something about all the other problems of overall integration, but if we are going to be able to make the buck stop in Austin to wield together a community of the kind [42] we are hoping for, then we will have to stop these opportunists for taking advantage of a situation and changing neighborhoods.

Q. Mr. McCarthy, you have been with the organization as you told the Court a while and you had dealings with the problems in Austin, in your experience what does it take in a boundary area to force white people to leave en masse? What kind of activities are you protesting against that you believe has this effect?

The Court: Let's confine ourselves. Let's confine it to what he is doing.

The Witness: Well—

Mr. Pomerantz: Yes?

The Witness: I believe the plaintiff's mere presence in the neighborhood, your Honor, is enough to panic those susceptible to panic and this is what we are talking about, those susceptible to panic. We are trying to keep them to stay long enough to be educated. I think the plaintiff's mere presence in the neighborhood and certainly direct evidence of his activities in the neighborhood is enough to panic them.

The Court: What are they?

[43] The Witness: The passing out of leaflets. At this point, I suppose, somebody could point to the plaintiff in any given neighborhood, if he would have his business there and this would panic them.

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[44-46] • • •

[47] • • • Mr. Long: Mr. McCarthy, is this the card you are protesting about, the distribution of?

A. That's right.

The Court: Where did you obtain that card?

The Witness: Father McKenna picked these up, your Honor.

The Court: Is Father McKenna here?

Mr. Long: I don't believe he was able to make it today, your Honor.

The Court: Does your client admit it?

Mr. Browne: Of course, he does.

The Court: Let's see it.

Mr. Browne: Find out if it is degrading, defamatory or whatever it is supposed to be according to their interpretation.

Mr. Long: I believe that is misinterpreting it.

The Court: Well, I take it from what I have heard so far, the literature Mr. Keefe passes out—

We invite your listing. We have prospective buyers for income property and residential property in the Austin Area. Jerry's Real Estate, 2140 South Laramie, Chicago, Illinois. Phone: Jerome Keefe, [48] Realtor, 378-8993. Is that it?

The Witness: That's right. That's what they been handing out.

The Court: How would that create panic?

Mr. Long: Your Honor, the problem is one where what is left unsaid is often more important than what is said.

The Court: What's so bad about soliciting business?

Mr. Pomerantz: Your Honor, perhaps there is a misunderstanding. Mr. Browne has just remarked or characterized this pamphlet as one that is derogatory, insulting. Now, if this is the issue—

The Court: I am talking about the pamphlet. This witness says this pamphlet creates panic in the owners of real estate. I have just read what that said. Will someone point out to me how that could possibly create panic?

Mr. Pomerantz: What the organization is concerned with, it is the pattern of distribution, your Honor. Nobody would contend if a real estate agent sent a card to every person, that anyone would assume that he is panic peddling. But where there is a pattern [49] of real estate with the expansion of the ghetto and these leaflets passed out in specific blocks only on the margin of that area, where Mr. Keefe said he only passed them out, that's panic peddling.

The Court: All it states is, We invite your listings. All brokers solicit business.

Mr. Pomerantz: That's correct. That's the only way they can get business.

The Court: A lawyer cannot do it. If he does, he is disbarred but a real estate broker may solicit business.

Mr. Pomerantz: It is not necessary to our defence he is breaking the law.

• • •

Mr. Long: Mr. McCarthy, let's go to the date of September 9, were you people at a meeting with the plaintiff, Mr. Keefe?

The Witness: Yes.

Mr. Long: Q. Would you tell us briefly what transpired at that meeting? [50] A. I was in the chair presiding. Mr. Keefe sat on my left. Mr. Holmes and Mr. Ed Fisher, I believe, on my right and it may be Mrs. Selzer on the far left on the otherside of Mr. Keefe and persons who are residents in the community, the Latrobe, Lockwood blocks, people who lived around this area of distribution. A couple police officers were there. Mr. Keefe was invited to answer questions. The people in the audience asked him questions. They expressed their feeling about his activity in the community, specifically on the solicitation.

Mr. Browne: Objection. This is all hear-say.

The Witness: I was there.

The Court: He was there. Tell us who said it.

The Witness: Mr. Keefe said in response to a question on the subject of panic peddling, Quote: Perhaps, I was overly aggressive, unquote.

He also indicated at one point in answer to other questions, quote: that the bulk of his buyers were negro people, unquote. The questions and answers went back and forth on this theme.

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[51-53] • • •

[54] • • • Mr. Long: Q. All right, your Honor, I would like to go over briefly the pamphlets distributed by the

O.B.A. so you will have an opportunity to see it. I want to go through September 9th, that has already been introduced by the plaintiff.

Mr. McCarthy, on September 16th, do you recall any leafleting by the organization in the neighborhood of the plaintiff? [55] A. The 16th?

Q. I believe that was a Saturday. A. This was the last occasion of that day. We went back to Westchester, if I am right on my dates.

Q. That's the week after the 9th.

The 9th is, as you testified, the first date that you had with Mr. Keefe? A. Oh, yes, yes. I believe that was the day we passed out, passed out leaflets in a shopping center. This was a Saturday too.

Q. The 16th? A. Yes.

Q. Calling your attention to this mimeographed sheet, was that distributed on the 16th? A. Well, I believe this is it.

Q. Could I have this marked, Defendant's Exhibit Number One, please? I submit this as Defendant's Exhibit Number One, your Honor, as the leaflet—

The Court: You are offering it at the wrong time. You will have to wait until your case is on. Any objection?

Mr. Browne: Objection.

The Court: Very well.

[56] Mr. Long: Mr. McCarthy, will you tell us in detail the distribution of that leaflet on the 16th?

The Witness: A group of us met, again at St. Thomas Acquinas. We took a bus, some took their own private automobiles, and went out to the shopping center.

Mr. Long: Q. What shopping center is that? A. I don't know the name of it. It is in Westchester.

Q. Do you know the address? A. I don't know the address either.

Q. Was this leaflet passed out in the neighborhood of the plaintiff? A. I don't recall.

Q. All right, calling your attention to Sunday, September 17th, what, if anything, did you do with respect to this matter? Did you pass out the leaflets? A. I, along with Father Don Ryan, went out and passed out another message in front of Devine Infant Church in Westchester.

Q. When did you arrive? A. I was there about 11:00 in the morning.

Q. It is that leaflet, the one that was passed out [57] on that date, could you tell the court? A. I believe it is, yes.

Mr. Browne: It may go in. That's the basis of our complaint.

The Court: Any objections?

Mr. Long: Were there any distributions at Devine Infrant's Church?

The Witness: No.

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[58] • • •

[59] *Cross Examination by Mr. Browne.*

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Mr. Browne: Q. Mr. McCarthy, how many real estate brokers are there in the Austin area? A. At the moment about 97 new ones and I don't know the exact number of established for a long time.

Q. Would you say there are about 100 there? A. I would say at this point, there are.

Q. And of course they buy and sell, they procure real estate all over the Austin area, is that right? A. Well, I don't know that.

Q. What? A. Some do and some don't, I suppose.

Q. Can you tell us what the percentage of negro real estate owners are in Austin? Can you tell us what percentages are there now? A. I don't know. I am not competent to—

Q. Is it 25 percent, ten percent, 70 percent?

Mr. Pomerantz: He said, he doesn't know.

The Court: He doesn't know.

The Witness: I am not competent to answer that question.

[60] Mr. Browne: Q. Now, do you know whether Mr. Keefe has sold real estate to every negro family or every negro real estate owner in that area? A. No, I don't know that.

Q. Do you know if he has sold to every negro family in that area; has he sold real estate to them? A. I could speculate, but it isn't probable he has.

Q. In other words, there are other real estate brokers who have sold real estate in that area? A. I don't know. I don't know. I have no personal knowledge of this. Do you want me to make an assumption?

• • •

[61] • • • Mr. Browne: Have any other real estate men in the Austin section signed any agreements with your organization as to how they are going to sell?

• • •

The Witness: Yes.

Mr. Browne: How many have signed the agreements?

[62] The Witness: I know of at least three, maybe more.

Mr. Browne: Q. Three out of 100 real estate men, is that right? A. Yes.

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[63] • • • Mr. Browne: • • • Now, Mr. McCarthry your organization is primarily interested in stopping the spreading of negro people coming into Austin, is that right? A. That's wrong.

Q. You are not opposed to any of the negro people coming into Austin and buying property there? A. No.

Q. Can you tell me if your organization for Better Austin has negro members? A. Yes.

[64] Q. I show you the—Is that your stationery by the way, Mr. McCarthry, is that your stationery?

The Court: Is that marked for Exhibit for Identification?

Mr. Browne: No, I am sorry. I better mark that. Now, I show you Plaintiff Exhibit Number Six.

(Whereupon Plaintiff's Exhibit Number Six was marked for Identification.

I ask you to look at the printing on the left, on the left here. I want you to go down the list of all of the names you see there, and point out who are negro members?

Mr. Pomerantz: Objection, your Honor.

The Court: Over-ruled.

The Witness: Jesse Madison, Treasurer, Mrs. Ella Daggett (phoenetic) Vice President, Homer Gardiner (phoenetic) Co-Chairman of the Housing Committee. These are I am certain, there are negros.

Q. In other words, three. Incidently you have no idea how many negro families are living in the Austin section? A. No, no, no.

[65] Q. You don't know? A. No, no.

• • •

Q. I guess, that's all.

The Court: No re-direct

Re-direct Examination by Mr. Pomerantz.

Q. Just one more question: There was one discussion of picketing characterized by Mr. Brown of marching up and down at Mr. Keefe's place of business on Laramie. Will you describe the activities of the members of the O.B.A. on the day you were speaking of in front of his place of business? A. Simply walking in an orderely picket circle a number of feet apart, not blocking the egress of the office, simply advertising the grievances of the people.

Q. Where exactly geographically were you walking? A. We were limiting ourselves to the front of the exact limits of Mr. Keefe's office, as the office faces on Laramie Avenue.

Q. Were you on the street? A. On the sidewalk.

Q. That's all.

[66] The Court: How many were there?

The Witness: I guess at any one time not more than 30 and of course, there were comings and goings all the time.

The Court: There are signs, four signs?

The Witness: Oh, no, there were many more than four signs. These pictures only capture four pickets.

Mr. Pomerantz: One more question, would you describe the conduct of the people?

The Witness: Very orderly.

Mr. Browne: I don't care what the conduct is, it doesn't give them the right to picket without justification?

The Witness: They were very orderly and they were instructed to be orderly and gracious with the passers by, and as usual the police were witnesses.

Mr. Pomerantz: The police were there you say?

The Witness: Oh, yes.

Mr. Pomerantz: Q. Why did the police come? A. Apparently, somebody called them.

Q. Do you know who called them? A. Someone always does. I don't know.

[67] Q. Were there any fiights going on like that? A. No.

Q. With anybody? A. No.

Mr. Browne: Just one question, Mr. McCarthy, did you know that Mr. Keefe's place of business was burned down three weeks ago?

Mr. Pomerantz: Objection. That's not right.

The Court: If he knows, let him answer.

The Witness: Yes, I know, sure.

Mr. Pomerantz: You are done?

Mr. Browne: No, I am not done. And, of course, nobody from the O.B.A. had anything to do with it, did they? The burning of his place—

The Witness: No, no, they did not.

Mr. Browne: And out of the 97 real estate brokers, could you tell us why Mr. Keefe's office was selected to be burned?

Mr. Pomerantz: Objection, Judge, please.

The Court: Sustained.

Mr. Browne: That's all.

Mr. Pomerantz: Mr. McCarthy, there was a fire?

The witness: Yes.

[68] Mr. Pomerantz: Q. In Mr. Keefe's office? A. Yes.

Q. Excuse me, you already testined to this. Did you have a conversation or any discussion with anybody concerning that fire? A. Well, I have people call me up on Sunday to tell me about it, certainly.

Q. Did you have a conversation or discussion with anybody connected with any official investigatory agency? A. No, no, I didn't.

Q. That's all.

Mr. Browne: Mr. McCarthy, do you know whether Mr. Keef's lease was cancelled at his place of business? A. I read about it?

Mr. Browne: Where did you read about it?

The Witness: I think in the Austinette. (phoenetic) I hate to admit, yes.

Mr. Browne: Q. Only in the Austinette? A. I don't know. It may have been also in the Austin News.

Q. Besides that, where else?

[69-70 * * *

[71] * * * DOROTHY SELZER, a witness called on behalf of the Defendant herein, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pomerantz.

Q. State your name and address? A. My name is Dorothy Selzer. I live at 5961 West End Avenue in Chicago.

Q. How long have you lived there? A. Five years.

Q. Are you in any way connected with the organization for Better Austin? A. Yes. I am a member of the organization.

Q. Do you hold any official position? A. I am on the membership committee as co-chairman and work with some of the other—

Q. Now, Mrs. Selzer, were you present at the meeting [72] with Mr. Keefe in St. Thomas Acquinas in early September? A. On one I was. I believe the 16th. It may have been the 9th. I am not sure about which date it was.

Q. Do you remember anything about that meeting, how it was conducted, who was sitting where, anything like that? A. Yes. Mr. Pete, Mr. McCarthy, I am not sure of Mr. Holmes and Mr. Ed Fisher, I believe.

Q. Were questions asked back and forth? A. Yes.

Q. You have heard the description of the meetings? A. Yes.

Q. Is that accurate? A. Yes.

Q. Do you recall anything that Mr. Keefe said in response to any of the questions? A. Well, he was asked about how his selling procedure—He did make one statement that he only sold to negroes.

Q. Did he say anything else? A. No white market. [73] Q. I don't understand? A. He said there is no white market.

Q. There is no white market in Austin. In other words he cannot sell to other people? A. That's right.

Q. Was the meeting conducted in an orderly fashion at all? A. Yes.

Q. Mrs. Selzer, did you ever go to Westchester alone or with any other people? A. With other people.

Q. Would you pick any date that you can remember that you went out there and tell us just what you did? A. I picked Saturday, the 16th. I was with a group when they approached Mr. Keefe to try and get him to come to talk with the O.B.A. back at St. Thomas Acquinas Church and he met us there this Saturday just mentioned. We went back to Westchester to pass out literature.

Q. That was after the meeting? A. Yes.

Q. When you say you passed out leaflets, will you tell us just what you meant? [74] A. Well, in my particular case I went from door to door and put it in the handle on the screen door.

Q. What was the leaflet, one of those— A. What has been presented.

Q. Was anybody with you door to door, or did you go along? A. My husband and Al Hurd (phoenetic), who is a negroe man.

Q. Were the three of you going door to door? A. We left that way and after we got up to the block a little ways, we decided to take separate blocks.

Q. Each one took a separate block? A. And then came back and met again.

Q. Now, when you walked up the sidewalk to the people's home, what did you do, you said you put it in the handle, did you do anything more? A. No. If they asked us what we are doing, we told them we had a panic peddler in Austin and we wanted Westchester to be aware they might be next.

Q. Did you ring the door bells? A. No, I did not. If they were inquisitive about [75] what that literature was—

Q. Now, your Honor to save time, I would like to ask Mrs. Selzer if this is the same type of activity she engaged in on any other days she went out, so we wont' have to quibble about it, is that all right?

The Court: No objection, no objection.

Mr. Pomerantz: Did you go out on any other days?

The Witness: Yes. I went out two times.

Mr. Pomerantz: Q. Was the conduct similar?

A. Same. Yes. The last time we went to places of business instead of homes. My particular group did.

Q. Did you have any trouble at any of these homes with these people? A. No.

• • •

Cross Examination by Mr. Browne.

Q. Mrs. Selzer, when you went out to Westchester you passed out certain pamphlets, is that right, or [76] pluggers? A. Leaflets, we call them.

Q. Is this one? A. Yes.

Q. Now, pardon me—This remark I only sell to negroes, is that why you had passed out these pamphlets to the people in Westchester because of the remark, I only sell to negroes? A. No, I don't believe we would say that was the only reason.

Q. Then why was this put in the plugger then? A. We was trying to get him to come to an agreement that he would sell both to negroe and white and not pursue the negroe market.

• • •

[77] Mr. Browne: Then you talked to just one person?

• • •

The Witness: Did we talk to him only?

Mr. Browne: Yes.

The Witness: No, we didn't talk to him only. You mean on that one meeting or as an organization?

Mr. Browne: Q. At all the meetings you attended. A. In regards to this?

Q. Where Mr. Jerry Keefe was the subject of your meetings— A. Yes.

Q. —to have him change his method of selling and one of his methods were to sell to negroe people, were you opposed to that method? A. Only, yes, sure.

Q. In other words, you are opposed? A. We want both classes represented, not just the Negroe market.

[78] Mr. Pomerantz: Your—I am sorry, ask the question.

The Witness: That what you want to know?

Mr. Browne: In other words, what I want to know is that you try to make him change his way of selling (Strike that)

I want to know is whether you opposed, whether you were opposed to his method of selling only to negroes or

to what? A. We are opposed to the method he is using to panic the white seller to selling.

• • •

[79] • • •

[80] • • • Q. Have you listed your property for sale? A. I have not. I have not listed my property for sale.

Q. Are you contemplating on listing your property for sale? A. I will not.

Q. Are you fearful that if negroes move into your block that your property will depreciate in value? A. Not just one family, but if it keeps progressing block by block, we all know it always has.

Q. Therefore, you are fearful it might happen to you, is that right? A. Well, how can we escape it?

• • •

[Volume II of the Transcript of Proceedings]

[1] • • •

[2] • • • WILLIAM A. HOLMES called as a witness on behalf of the defendant herein, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pomerantz.

Q. Mr. Holmes, will you state your name and address? A. William A. Holmes, 5427 West Gladys.

Q. And, you are one of the defendants in this case and associated with the Organization for a Better Austin? A. Yes, sir.

Q. What capacity do you serve in it, if any? A. I am Chairman of the Real Estate Practices [3] Committee. One of three chairmen, I should qualify.

Q. Mr. Holmes, do you recall any activities on September 9? A. Yes, sir, I do.

Q. Related to this controversy. Did you participate in any of them? A. Yes, sir.

Q. Would you tell us what you did? A. Yes, sir.

The people from the Latrobe-Lockwood Block Club, and Real Estate Practices Committee came together in the morning of that day, to seek some sort of redress for what they felt was something that they didn't like about Mr. Keefe's practices in that block. And, we proposed that because of the fact that prior to this time, we had picketed his office and Keefe had failed to meet with us on the previous Saturday at the Austin "Y", and during the week, we picketed him trying to force him to come and meet with the people, because he failed to meet with us; we decided [4] that the next step would be to reach where he lived; in other words, to go to Westchester and ask him to come and meet with us there.

So, the group got together with the Latrobe-Lockwood Block Club and members of the Real Estate Practices Committee and went to Westchester, Keefe's home, for the purpose of seeking a meeting with Keefe and, you know, for the purpose of handing out flyers on him, unless Keefe, you know, agreed to come and visit with us.

Q. Did you go to his home in the morning? A. Yes, sir.

• • •

Q. What transpired there? A. Well, several of us, Mr. Coment (phonetically) from the Latrobe Block Club, Justin McCarthy and myself, went to the door and talked with Mrs. Keefe and intimated to her that we had these flyers and—

Mr. Browne: I'm going to object to any conversation with Mrs. Keefe—

The Court: Sustained.

Mr. Browne: —unless Mr. Keefe was present.

[5] • • • Q. What happened when you were there, what did you—not talking to Mrs. Keefe—what did you do?

What was the next step after getting to the door and finding Mr. Keefe was not at home? A. We tried to arrange a meeting with Mr. Keefe and—

Q. Was the meeting arranged? A. Yes, sir, it was.

• • •

[6] • • • Q. Then, what happened after the meeting was arranged? A. We returned back to Westchester—Austin, excuse me, and we had an appointment to meet with Keefe at one o'clock, at Saint Thomas Parish—

• • •

Q. Was this meeting held? [7] A. Yes.

Q. And he appeared at the meeting? A. Yes.

Q. Would you describe the meeting to us, the sort of conversation that went on? A. Yes, sir.

Out position at the meeting was that most of the people of the Latrobe Block Club were in a position, had a feeling of protest about Keefe's solicitation in that block, and what we wanted out of Mr. Keefe was an act of faith, if you will, in the community; some signed statement to indicate that he would no longer harass the people by that method that they felt was offensive to them, namely, to stuff their mailboxes and make phone calls and personal visits and things like that.

Q. Was Keefe given an opportunity at the meeting to pose questions and answer questions posed to him? A. He answered questions that were posed to him.

Q. Do you recall directly any of the questions and answers that occurred? [8] A. Yes. One of them was, "had he ever done business in anything but a racial changing neighborhood," and he said, "no, that he never done business"—

Mr. Browne: If Your Honor please, I will object to the line of questioning—raises issues not before the Court.

The Court: Objection over-ruled. Go ahead, please.

Q. Thank you, Your Honor.

Would you go ahead, Mr. Holmes, if anything else?

A. Yes.

When confronted, Jerry Keefe made a statement that he only, you know, sells to high—if I remember the exact term—high caliber Negros, and that one of the Negros in the audience asked what he means by high caliber, and Keefe said, "well, he visits their homes sometime, to check their credentials out," to see that, you know, he got—and the Negro said, "what do you mean by high caliber; isn't the only thing you are concerned with is that they can make the down payment," and [9] Jerry Keefe noded and said, "yes."

And, I remember one other statement that, which was—had a lot of people a little excited, was the statement that—

Mr. Browne: Object to excited and all that—

The Court: Let's find out.

Mr. Browne: I'm going to object further to the man's comments on what he thought, and I am going to object further to the comments about what he thought, what the other people thought.

The Court: Strike it out. Just tell what was said.

A. All right, one of the statement which stuck in my mind, personally, was that he said he bought—has bought a number of homes in racially changing neighborhoods and when asked whether you have tried to panic them—

* * *

[10] * * * The Court: Over-ruled, go ahead, continue the statement.

A. Well, they asked mainly if you are trying to panic them out, Jerry said, "No, nobody is forcing them to sell

to me," you know, and these are some of the statements that I remember out of the meeting.

Q. What happened after the meeting? A. Well, it seems that the meeting had got to an impasse; Jerry refused to sign and the people tried to argue with him, after a point, they reached—they decided—let's not listen to any more, let's go back out to Westchester.

Mr. Browne: Going to object to the—

The Court: Strike it out.

Q. What actually happened, not imagination or opinions, what did you personally do? A. We went to Westchester and handed out flyers.

Q. When you say you handed out flyers, what exactly do you mean? [11] A. I think, well, we placed flyers in the screen doors of various homes on Keefe's block, we handed flyers out in the shopping center in Westchester by the Jewel and National Food Stores, and generally just distributed flyers—

Q. Did you have any trouble? A. None.

Q. Anybody start fighting, did you start to fight out there? A. No.

Q. Did you, Mr. Holmes, go to Westchester the following Saturday, the Saturday, the 16th? A. Yes, sir.

Q. Back tracking from that Saturday to the 14th— A. Yes, sir.

Q. —the Thursday before, can you tell us what your actions in connection with this dispute were on the 14th? A. Yes, sir. On the 14th, Vice President Justin and myself were involved—talked to Father Langan of Divine Infant, to a—I don't know what you call it, like, I guess it could be like a [12] consultation type of hearing which was held in the rectory of Divine Infant.

Q. Excuse me, what is Divine Infant? A. A church.

Q. Where is that located? A. Well, it's Jerry's

parish, I don't know the specific street address it was, right about in the middle of town, I guess—

Q. Okay. A. But, at this hearing, Jerry Keefe and his wife were present. I don't remember the lawyer's name who was acting as sort of a friend to both sides, trying to reach some sort of agreement, and Father Langan was there.

And the gist of it was we came back with this two sided type of agreement, our original agreement which I think was "A" and Jerry's proposed alternate, which was "B" or vice versa—I think it's part of the evidence here—and was offered at that time, was that, you know Jerry said that "I will make and sign this type of agreement, and as an alternate to the one that you are offering, which I would refuse to sign."

[13] And, I intimated to Jerry it's up to the people to decide whether that—you know, I can't accept the signature—in other words, I am here on advice of the committee; it's up to the committee whether they will accept or reject this statement.

• • •

[14] • • •

[15] • • • Q. Did you distribute anything or go to Westchester on the 17th of September? A. Yes.

Q. This would be Sunday? A. (Shaking head)

[16] Q. What did you do then? A. Handed out flyers at Mass.

Q. Where? A. Divine Infant, same parish.

Q. Same parish.

Do you recall who you handed them out to? A. Parishioners coming from Mass and going in.

Q. Did you go inside the building? A. No.

Q. Do you have any idea how many people were there then? A. You mean in our group or in Mass?

Q. With you—I am sorry—from your group; how many people were handing out leaflets? A. I'd say, you know, we have quite a few activities, I can't remember.

Q. Okay. Do you recall any people that were arrested, any fights that anybody got into or anything like this, any disturbances? A. Not outside of one statement someone made to me.

[17] Q. What was that statement? A. One of the Westchester people came out and said, "don't you realize this is a House of God, and shouldn't be doing this here."

And, I tried to explain to them our position, and he went back in the church and a few minutes later came out with his wife, and made a statement rather loudly that "these people were demonstrating against God." Then he walked down the street—

Q. That's the only thing— A. That was the only thing that stuck in my mind a little bit.

Q. On September 30, did you go out to Westchester? A. Yes, sir.

Q. How did you get there, do you remember? A. If I remember correctly, we all went in my bus, I have a Volkswagen, one group of people.

Q. What did you do there, when you got to Westchester? A. Basically the same thing we had been doing, passing out flyers.

[18] Q. Where actually did you pass them out, do you remember? A. We broke into teams so that a group that was handing out flyers—

Q. Where did you personally hand out flyers? A. I handed them out in the shopping center.

Q. Did you have any difficulty, any fights or anything, with anybody? A. No.

Mr. Pomerantz: Would you mark this Defendant's Exhibit Three for identification.

(Received and marked Defendant's Exhibit Three, for identification.)

Q. Do you recognize this. Don't tell us what it is, do you recognize it? A. I do.

Q. Something on the other side too? A. Yes, sir, I recognize it.

Q. Will you tell us what that is and— A. On one it's the text of an editorial that was given on Channel Five by Len O'Connor, basically on our fight against panic peddling.

[19] On the other side there is material that we had printed on Jerry Keefe; this in fact was one of the flyers we passed out on September 30th.

• • •

[20] Q. You are the chairman of the Real Estate Practices Committee of OBA? A. Yes, sir.

Q. Are you in a position to know a little something about the background history of OBA? A. The background history of OBA extends from June 11, I believe when we formed—

Mr. Browne: What year. A. 1967.

Q. Do you spend any funds? A. Yes, sir.

Q. Where do the funds come from to maintain the organization? A. From my pocket—not the whole organization is.

Q. The whole organization? A. I don't ever spend—

Q. I don't mean your phone calls and things like that outside the organization itself. A. The funds for the organization have been funded from the Austin Clergy Council who put up, I believe it's Eighty Thousand Dollars for the first two years of operation to help the community stabilize itself.

[21] Q. Austin Clergy Council? A. Yes.

Q. Can you be a little more specific as to what you

mean? A. Participating members of—mainly of the various clergy in Austin, Lutheran, Catholic, Jewish—they have funded—

Q. That's all for him.

Cross Examination by Mr. Browne.

• • •

[22] • • • Q. This organization is called the Organization for a Better Austin? A. Uh huh.

Q. You say this was formed when, in 1967? A. June 11.

Q. 1967, is that right? A. Right.

Q. And, prior to that time, was there any other organization in which you were connected, whose objectives were to control the method of operation by real estate men? A. Nope, my first experience.

Q. Now, do you know how long Mr. Keefe has been in that area as a real estate operator? [23] A. Not directly, I am only two years in this area myself.

Q. Are you there just two years, is that right— A. I own a home—

Q. Did you buy property there? A. Yes, sir.

Q. All right, where is your address again? A. 5427 West Gladys.

Q. And, of course having been there for two years, do you feel that the value of your property might be impaired if Negros move in? A. Yes, sir.

Q. So, that the primary purpose is to prevent the sale of real estate to Negro people is this right? A. No, sir.

Q. Even though it might impair the value of your property? A. I don't consider the movement of Negroes into the community per se means whereby my property value is impaired. I consider panic peddlers responsible for that.

[24] Q. Would you tell us what is a panic peddler? A. I consider him a person who tries to coerce someone into selling their property for a profit, in other words playing on fears of white people in order to get them to sell their property, then as such he is buying property up and selling to Negroes for a profit.

Q. Do you know of any case when Mr. Jerry Keefe did that? A. Do I know of any case?

Q. That's right? A. Specifically?

Q. Yes? A. No, sir.

• • •

[25-27] • • •

[28] • • • Q. Mr. Holmes, when Mr. Jerry Keefe refused to sign this— A. Yes.

Q. Then you went out with these pluggers to where he lived in Westchester, and passed them out is that right? A. Yes, sir.

Q. And, you did that because Mr. Keefe refused to sign this agreement, is that right? A. Yes, sir.

Q. All right.

In other words, your primary motive was to coerce him to sign this agrement is that right?

Mr. Pomerantz: Let's ask him, Your Honor what his primary motive was.

The Court: He did ask him, is that right.

Mr. Pomerantz: Putting—

The Court: That's proper cross examination.

A. All right, I'll answer that by saying that my primary motive was to ask Mr. Keefe to [29] make a public act of faith in the community where he is making his living, and because he failed to do this—in fact he said that we don't want a thing to do with you, and we don't care about your community—so we went out and decided to let his, let his neighbors know what he was doing to us.

Q. And, by doing this, you had hoped that he would finally sign this agreement that you submitted, is that right? A. Yes, sir.

Q. Okay, that was your primary motive wasn't it? A. Yes, sir.

Q. All right.

I show you Plaintiff's Exhibit Number Two, and ask you to look at the picture and tell us what you recognize, if anything.

(Plaintiff's Exhibit Number Two in evidence tendered to witness)

A. I see Jerry's office at Fourteen South Laramie.

[30] Q. What else do you see there? A. Four pickets, myself one of them.

Q. You were one of the pickets weren't you? A. Yes, sir.

Q. Is that the method you were going to use to coerce Mr. Keefe to sign this agreement. A. This is one of the methods we used to get Mr. Keefe to come and even talk to us.

Q. Now, — may I have this please? Thank you sir.

When you summoned Mr. Keefe to a meeting, did you construe to him that it was compulsory for him to appear, and subject himself to your questioning? A. No.

Q. It was not compulsory was it? A. No, sir.

Q. So, therefore because it was not compulsory, you were going to use a method to compel him, is that right? A. That's the normal means of protest.

Q. Thank you, that's all.

[31] *Re-Direct Examination by Mr. Pomerantz.*

• • •

[32] • • •

[33] Q. Mr. Holmes, can you tell us where the words written on the compromise agreement came from? Did your committee for example draft that document? A. You mean the one we proposed.

Q. The one that you are holding, you asked Mr. Keefe to sign, and he proposed an alternate? A. They were identical to the words that we used for another realtor who did sign with us after confrontation, who we had—

* * *

[34] * * * *Re-Cross Examination by Mr. Browne.*

Q. Just one question, Mr. Holmes.

When you were in Westchester, you passed out these pluggers, by putting them into the mailboxes in homes out there, putting them in screen doors and on the porches. Did you do that? A. Yes.

* * *

Q. Now, in your opinion, it was right for you to do that, pass these pluggers out but wrong for Keefe to do it?

[35] A. Except one major difference, we are not making any money out of it.

Q. Is it criminal to make money in this country? A. No, sir.

Q. Honestly of course.

That's all.

The Court: Just a moment.

You called him a panic peddler?

A. Yes, sir.

The Court: Tell me something that he did or said that you know of that in your opinion constitutes a panic peddler? A. We have a complaint on the books, which a public hearing is scheduled for the Mayor's Commission, in which he said to Mrs. Zampardi on Lockwood,

when she asked Twenty-eight thousand dollars for her house, he said no, Twenty-one thousand dollars plus six percent commission, and in the same sentence, you know Negros are coming in, and said in fact I only sell to Negros, so when you are ready to do business—

Mr. Browne: I'm going to object to that [36] because—

The Court: Well, were you there when he said that. A. No, sir, this was on her complaint.

The Court: You don't know that he said this. A. All I know is what Mrs. Zampardi told me.

The Court: Is she here? A. No, not as far as I know, I tried to contact her.

The Court: What someone told you she said is hearsay, that's not admissible evidence.

Mr. Browne: That's right.

The Court: If he did say that to this lady I want to hear it from her.

As far as you know, there is nothing that you know of, that he said in your opinion that would constitute being a panic peddler?

Mr. Pomerantz: Your Honor—

The Court: Wait now.

A. Not me personally.

* * *

[37] * * *

[38] * * * The Court: Let me see the document.

That's the one he made—"B" is his, "A" is yours.

The Court: Well, let's analyze it.

In your proposal number one, "Neither I, Jerome Keefe, nor any of my salesmen, will solicit property, by phone, flyer or visit in the community of Austin."

In other words, you don't want him to do business in Austin at all.

Mr. Pomerantz: That's not what that says, Your Honor.

The Court: Well, if he doesn't solicit where [39] is he going to get it?

Mr. Pomerantz: Well, the point here is admitted that he must advertise. Most business advertise and take out notices in the papers.

The Court: Well, is it unlawful for a broker to solicit?

Mr. Pomerantz: Under certain circumstances, it is.

The Court: That isn't what it says, it says to solicit.

Mr. Pomerantz: All right.

The Court: Number two, you want him to agree to show property to white as well as Negros. They agree to that don't they, in "B"? A. Yes, sir.

The Court: All right.

You want him to make a listing of housing available to the referral committee. A. Yes, sir.

The Court: Of the Organization. They agree to that. A. (Shaking head.)

[40] The Court: So, the only point you two group differ on is that you don't want him to solicit in the community of Austin? A. Yes, sir.

The Court: In other words, you don't want him to go anywhere in Austin soliciting, is that right? A. Right.

• • •

The Court: This is his counter.

He says, instead of wording it the way you want it worded, which would put him out of business, he says he's willing to do this:

"Neither I, Jerome Keefe, nor any of my salesmen, will colicit for sale, lease, listing or purchase any residential real estate within the State of Illinois, including the Community of Austin, on the grounds of loss of value due to the present or prospective entry into the vicinity of the

property involved, of any person or persons of any particular race, color, religion, or national origin or ancestry."

What's wrong with that?

[41] A. In the first place, if you are asking me an opinion—you are saying this is putting him out of business —I don't understand how stopping soliciting in a racially changing neighborhood is putting a realtor out of business; they are not out of business in Highland Park, where the realtors act as a go between. Under law, they bring buyer and seller together, for which they receive a six percent commission.

What we are saying, is that we are objecting to his solicitation for the purposes of exploiting white people, getting them to sell their property at a depressed value—

The Court: I understand.

A. — so they can make a fast buck on it. He's buying property.

The Court: You said a moment ago that he told this lady, that if she didn't sell, that the property value would go down.

A. No, I didn't —

The Court: I remember he did say that.

Mr. Pomerantz: Your Honor, may I say. Your Honor raises a very crucial question, which is [42] dealt with to a very great extent in our Exhibit "B" which was attached to the original answer, which is a pamphlet by the Commission on Human Relations. No one is arguing that there are other ways of soliciting or—excuse me, other ways of panic peddling, that is, to meet the exact words of the statute which prohibit it.

The problem is reflected in these two agreements, and there is a paragraph of the agreement where they differ. The situation in the Austin area of Chicago at this time is such that it takes less effort on the part of any real

estate man to induce fear into the people who live there, and to cause them to move, when previously they were probably thinking about that at some time and they rejected the idea. Then they get cards, they get cards from Mr. Keefe, or whoever else may be involved. It's the explosive situation which exists in this area, and that is what makes any type of solicitation, other than the normal types that are practiced all the time, bad here. Now, we don't say—

[43] The Court: What are the normal types?

Mr. Pomerantz: The normal types are advertising in the papers, making lists up of prospective buyers and sellers of homes, with this big deal about multiple listing service, and then these lists go flying around for all the major dealers in the community and probably someone out of state to get people who are being transferred here—

The Court: Well, is it unlawful for brokers to call property owners and say I'd like to have your property as a listing?

Mr. Pomerantz: It is not, but it is not a typical practice, and when it is engaged in in a neighborhood that has a situation that the Austin neighborhood now has, while the person doing it may not be able to be convicted under the statute that provides for it, it does have a deleterious effect and does cause the situation of panic peddling.

This booklet by the Commission explains the dilemna, that while the elements of the statute might not always be provable in every case, if a neighborhood is in a certain situation, [44] almost anything can tip the balance and make of what would have been a legitimate practice an illegitimate practice. It's a dilemna that we have met; it's occupied the talents of very many writers, very many politicians, all sorts of people who don't know exactly how to go about dealing with this activity.'

Now, these people here have—have simply decided the best thing to do is to try to pressure the plaintiff in this case. I don't know if they have done it to anybody else. They wanted to pressure him to stop what they found in this situation to be objectionable.

Now, the plaintiff in turn is simply trying to stop them from expressing their views. The law doesn't say that a person has to be guilty of a criminal offense before someone else tells that person's neighbors about his pratices.

So, this is the dilemna that we are caught between right now. And, Your Honor, in the absence of evidence which would convict Mr. Keefe of the crime under the Illinois Statute —

[45] Mr. Browne: If the court—

Mr. Pomerantz: That's not the issue, we are talking about the temporary restraining order upon these people to stop them from exercising what we consider to be their rights of freedom of speech and assembly under the Constitution.

Now, this is simply one tactic—I believe this Tribune article in evidence will show—will show there are all sorts of tactics engaged in by all sorts of community groups to gain their wishes.

You may remember, Your Honor, when the South Outer Drive was expanded, there were little old ladies hugging the trees, and men came up with saws and sawed just above their head, and had the trees fall down. This was simply another means of protest engaged in by those people. That's essentially what we are doing here.

Mr. Browne: Counsel —

The Court: Have you finished with this witness?

Mr. Pomerantz: I'm all finished Your Honor.

The Court: You are excused.

Call your next witness.

Mr. Long: Your Honor, we have another witness, Reverend Father Edward McKenna, who we can call, however, I think that he might repeat what has already been said, and since this is only a preliminary injunction, further testimony and witnesses to refine the factual issues. I think should await final hearing; unless Your Honor feels that he would like to hear these other witnesses, we will reserve the other witnesses until final adjudication of this matter.

The Court: You have to conduct a trial the way you think it—

Mr. Pomerantz: You expressed the desire at one point to see the cards that Father McKenna had. He has them here, but I think a photostat of one of them is in one of the exhibits already introduced in evidence and I don't think that—

Mr. Browne: In other words, they are trying to save their ammunition for the final battle.

Mr. Pomerantz: If Your Honor wants to hear—

The Court: I am here in Court until 4:30, 5:00 o'clock.

[47] Mr. Long: The plaintiff only motioned up a hearing for a preliminary injunction.

The Court: If you wish to rest, you may do so; and if you wish to put on more evidence you may do so. This is your decision.

Mr. Long: We would of course like a final argument.

The Court: Yes, first, decide if you have any more witnesses.

(Short recess)

The Court: You may proceed.

Call your next witness.

Mr. Pomerantz: That's all the witnesses we'll call. The defense rests.

The Court: Rebuttal.

Mr. Browne: No.

The Court: No rebuttal, you may proceed with your argument if you wish.

[48-59] • • •

[60] • • • The Court: This court has no power to enjoin peaceful picketing at a place of business.

The defendants are entitled to [61] engage in peaceful picketing at his place of business.

The plaintiff has an adequate remedy at law, if they libel him or slander him while they are so picketing.

Counsel said that that isn't enough. I believe that if the defendants slander or libel the plaintiff, and he files his law suit for slander against each individual and the organization, and these individuals, and this organization are called upon to pay attorneys' fee to their lawyers, they will soon stop quickly, slander and libel.

The order of this court will be that the defendants will not be enjoined from peaceful picketing at his place of business.

They will be enjoined from picketing anywhere in Westchester or for passing out any leaflets or any literature of any kind, in any manner, anywhere in Westchester.

Please draw your decree and bring it in.

Mr. Browne: If the court please, what about [62] in Chicago?

The Court: In Chicago they may picket and pass out leaflets, and if they are libelous or slanderous, you have a remedy, and you may rest assured that if they do come to libel and slander and they are called upon by an attorney to pay a couple thousand dollars for fees, they are going to stop slandering.

Mr. Long: Your Honor, I take it that this is a preliminary injunction?

The Court: That's all we have been trying.

Mr. Pomerantz: Is there a matter of bond, Your Honor?

The Court: No, there is no bond.

Mr. Long: I take it this is of ten days duration.

The Court: You know the law, follow the law. This is a temporary injunction under the statute.

• • •

[C43] State of Illinois } SS
County of Cook }

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department — Chancery Division

JEROME M. KEEFE,
Plaintiff

vs.

ORGANIZATION FOR A BETTER AUSTIN, WILLIAM HOLMES and JUSTIN McCARTHY,
Defendants

No. 67 CH 5357

ORDER

[Entered Dec. 20, 1967]

This matter having come on for hearing for temporary injunctive relief, pursuant to the verified complaint for an injunction filed by the plaintiff herein and verified answer filed by the defendants, and the Court having heard the testimony of the witnesses for the plaintiff and for the defendants, and the arguments of counsel, and being fully advised in the premises,

The Court Finds:

1. That the defendants, members of a community organization called the Organization For A Better Austin, and the Organization itself, have, during the period complained of, engaged in activities protesting certain alleged practices of the plaintiff, a real estate broker in the Austin neighborhood of Chicago;

2. That on some days during the month of September, 1967, various members of the Organization picketed,

with placards and signs, in front of plaintiff's place of business [C44] at 214 South Laramie Street, in the Austin neighborhood in Chicago;

3. That said picketing was at all times conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic in the area, and did not precipitate any fights, disturbances or other breaches of the peace;

4. That on September 9, 16, and 30, 1967, and October 22, 1967, some members of the Organization went to Westchester, Illinois, a suburb of Chicago, where the plaintiff resides, and distributed leaflets consisting of mimeographed sheets containing critical descriptions of the manner in which plaintiff was conducting his real estate business in the Austin neighborhood;

5. That said leaflets were distributed in several locations at various times on the said dates: to residents of some homes in the neighborhood of plaintiff's place of residence, to some people in a shopping center in Westchester, and to some parishoners on their way to or from Mass at the Devine Infant Church in Westchester;

6. That the said distribution of leaflets was on all occasions conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic, and did not precipitate any fights, disturbances or other breaches of the peace;

7. That the defendants have a right to engage in a peaceful picketing of the plaintiff's place of business;

8. That defendants have no right to distribute the said leaflets in Westchester, the suburb in which plaintiff [C45] resides;

9. That defendants' activities in Westchester have invaded plaintiff's right of privacy, causing irreparable harm, and that plaintiff has no adequate remedy at law.

It Is Therefore Ordered, Adjudged And Decreed t
all members of the defendant organization and the
fendants named herein, be and are hereby temporar
restrained and enjoined from passing out pamphlets, le
lets or literature of any kind, and from picketing, a
where in the City of Westchester, Illinois.

It Is Further Ordered that the motion for injuncti
relief for the issuance of a temporary injunction restra
ing and enjoining the members of the defendant orga
zation and the defendants named herein from picketi
the plaintiff's place of business and passing out pamphle
which criticize the plaintiff's method of operation or mea
of doing business, is hereby denied.

Enter:

/s/ D. A. Covelli
Judge

OPINION OF THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

No. 53057

JEROME M. KEEFE,
Plaintiff-Appellee,

v.

ORGANIZATION FOR A BETTER AUSTIN, JUSTIN M. MCCARTHY, WILLIAM HOLMES, and KATHY METROPOULOS,
Defendants-Appellants.

Appeal From Circuit Court, Cook County
Honorable DANIEL COVELLI, Presiding.

MR. JUSTICE MURPHY DELIVERED THE OPINION OF THE COURT.

Defendants appeal from an interlocutory order which found that their activities in Westchester, Illinois, a

suburb of Chicago where plaintiff, a real estate broker, resided, "invaded's plaintiff's right of privacy." The order temporarily restrained defendants from passing out literature and from picketing "anywhere in the City of Westchester," but denied injunctive relief as to plaintiff's place of business in the Austin neighborhood of Chicago. Defendants' direct appeal to the Illinois Supreme Court was transferred to this court on the ground that it had no jurisdiction on direct appeal in this case.

On appeal the determinative issue is whether the temporary injunction enjoining the picketing and distribution of leaflets in the area of the plaintiff's home denied defendants' freedom of speech and press under the First and Fourteenth Amendments to the United States Constitution and Article II, Section 4 of the Illinois Constitution.

Plaintiff is a real estate broker operating in the Austin area of the City of Chicago. From time to time he solicits listings from property owners by door-to-door distribution of his business card. The card contains the name "Jerry's Real Estate" and gives his business address and telephone number. It bears the legend, "We invite your listings. We have prospective buyers for income property and residential property in the Austin area."

The Austin area is undergoing racial change, and the defendant Organization for a Better Austin [OBA], an integrated community organization, has been working to keep white residents in the community. In its efforts to stabilize the community and to deal rationally with integration, the OBA is attempting to stop "panic peddling" by those brokers who exploit residents of racially changing areas by fomenting panic among them. Among its committees is the Real Estate Practices Committee, which deals with "panic peddlers." The OBA objects to any form of solicitation of real estate listings, and it has

obtained written agreements from a number of local real estate brokers covering selling practices, which agreement plaintiff refused to sign.

In order to induce plaintiff to stop these solicitations of real estate listings, defendant OBA initiated a program of picketing and leaflet distribution in the areas of his home and his place of business. The purpose of these activities admittedly was to make plaintiff agree to stop soliciting business. The Westchester leaflets gave plaintiff's home address and telephone number and urged Westchester residents to call plaintiff and tell him to sign the agreement. The leaflet contained the statement: "When he signs the Agreement we stop coming to Westchester."

At the trial, defendant William A. Holmes, when cross-examined about the primary motive for passing out "pluggers" in Westchester, said:

A. All right, I'll answer that by saying that my primary motive was to ask Mr. Keefe to make a public act of faith in the community where he is making his living, and because he failed to do this—in fact he said that we don't want a thing to do with you, and we don't care about your community—so we went out and decided to let his, let his neighbors know what he was doing to us.

Q. And, by doing this, you had hoped that he would finally sign this agreement that you submitted, is that right?

A. Yes, Sir.

Q. All right.

On October 4, 1967, plaintiff commenced the instant action for injunctive relief. In plaintiff's amended complaint it is alleged that the defendants were displeased with the manner in which plaintiff conducted his real estate business and accused him of being "a blockbuster (selling real estate to one Negro family and then fright-

ening the other property owners in the neighborhood whereby they became panicky and began to offer their property for sale through plaintiff's real estate office), which course of conduct on the part of defendants commenced on or about August 15, 1967 and continued through October 1, 1967, and still continues without any justifiable cause, reason or excuse."

Plaintiff alleged that members of the OBA picketed his place of business and distributed literature through the community "criticizing him and impugning his reputation as an honest and law-abiding operator of a real estate business," and attacked the business tactics employed by the plaintiff. The relief prayed for was an injunction restraining defendants from picketing his place of business and his home and from distributing derogatory pamphlets.

Defendants answered and admitted picketing and the distribution of circulars, and stated "that the activities that they engaged in were an exercise of the rights of freedom of speech and assembly guaranteed to them by the Constitution of the United States and of the State of Illinois." Defendants denied that plaintiff was entitled to any injunctive relief against them.

After a hearing, in which both sides introduced the testimony of witnesses and exhibits, the trial court entered an order on December 20, 1967, which included the following findings:

4. That on September 9, 16, and 30, 1967, and October 22, 1967, some members of the Organization went to Westchester, Illinois, a suburb of Chicago, where the plaintiff resides, and distributed leaflets consisting of mimeographed sheets containing critical descriptions of the manner in which plaintiff was conducting his real estate business in the Austin neighborhood;

5. That said leaflets were distributed in several locations at various times on the said dates: to residents of some homes in the neighborhood of plaintiff's place of residence, to some people in a shopping center in Westchester, and to some parishioners on their way to or from Mass at the Divine Infant Church in Westchester;
6. That the said distribution of leaflets was on all occasions conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic, and did not precipitate any fights, disturbances or other breaches of the peace;
7. That the defendants have a right to engage in a peaceful picketing of the plaintiff's place of business;
8. That defendants have no right to distribute the said leaflets in Westchester, the suburb in which plaintiff resides;
9. That defendants' activities in Westchester have invaded plaintiff's right of privacy, causing irreparable harm, and that plaintiff has no adequate remedy at law.

The order granted plaintiff injunctive relief as to his home and denied it as to his place of business. This is the order from which defendants appeal.

As to the distribution of leaflets, defendants assert that a number of cases cited by the United States and Illinois Supreme Courts have clearly established that the distribution of non-commercial pamphlets, leaflets and literature is fully protected under the State and Federal constitutional free speech and press clauses against prior restraint. On this point defendants' authorities include: *Lovell* v. *Griffin*, 303 U.S. 444 (1938), and *Schneider* v. *Town of Irvington*, 308 U.S. 147 (1939).

In *Lovell* v. *Griffin*, a State ordinance prohibited the distribution of literature of any kind within the limits

of the City of Griffin without the permission of a city official. The Supreme Court found this provision to be an unconstitutional restraint on freedom of speech and the press and stated (p. 452):

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.

* * *

"The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U.S. 727, 733."

In *Schneider* v. *Town of Irvington*, State ordinances prohibited the distribution of literature without a license from the chief of police. There the Supreme Court held the licensing made impossible the free and unhampered distribution of pamphlets and said (p. 164):

"As said in *Lovell* v. *City of Griffin, supra*, pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees."

Defendants also cite the following cases where the Supreme Court of Illinois held that ordinances which licensed the distribution of pamphlets and circulars violated Section 4 of Article II of the Constitution of Illinois: *Village of South Holland* v. *Stein*, 373 Ill. 472, 26 N.E.2d 868 (1940), and *City of Blue Island* v. *Kozul*, 379 Ill. 511, 41 N.E.2d 515 (1942).

In *Village of South Holland* v. *Stein*, a village ordinance made it unlawful for anyone to go to a private residence for the purpose of soliciting without a license. There the court cited *Lovell* v. *City of Griffin* and *Schneider* v. *Town of Irvington* and said (p. 479):

> "The constitution of Illinois is even more far-reaching than that of the constitution of the United States in providing that every person may speak freely, write and publish on all subjects, being responsible for the abuse of that liberty. Webster's International Dictionary defines the word 'publish' as meaning 'to bring before the public as for sale or distribution.'"

In *City of Blue Island* v. *Kozul*, an ordinance provided that all "peddlers" have a license. Defendant, a member of Jehovah's Witnesses, walked up and down the streets with a 15-year old boy, carrying a sign and offering to sell a publication for five cents. In reversing the conviction the court held the ordinance unconstitutional. There the court said (p. 514):

> "Section 4 of article 2 of the constitution of Illinois provides: 'Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.' The first amendment to the constitution of the United States provides: 'Congress shall make no law * * * abridging the freedom of speech, or of the press.' It has been frequently held that the freedom of speech and of the press secured by the first amendment against abridgement by the United States is similarly secured to all persons by

the fourteenth amendment against abridgement by a State."

And at page 515:

"Recent pronouncements of the Supreme Court of the United States make it obvious that the ordinance here in question, as applied to the sale and distribution of the magazines and leaflets by the defendant is unconstitutional and a violation of the right of freedom of speech and of the press. *Lovell* v. *City of Griffin, supra; Schneider* v. *Town of Irvington, supra.*"

Defendants further argue that injunctions restraining the distribution of literature are as much prohibited as the ordinances found unconstitutional by the Illinois and United States Supreme Courts. (*Near* v. *Minnesota*, 283 U.S. 697 (1931); *Montgomery Ward & Co.* v. *United Employees*, 400 Ill. 38, 79 N.E.2d 46 (1948).) Defendants further cite *Martin* v. *Struthers*, 319 U.S. 141 (1943), where the United States Supreme Court held that Jehovah's Witnesses had a constitutional right to distribute their information from door to door. The right to distribute was recognized even though the Witnesses rang doorbells at a time of the day when many residents were accustomed to be sleeping. Despite this disturbance, the right to distribute information was upheld. Defendants note that in the instant case no such disturbance was created and the leaflets were merely placed in or near the doors of the homes and no doorbells were rung and none of the residents complained. In *Martin* v. *Struthers*, the court said (p. 145):

"While door to door distributors of literature may be either a nuisance or a blind for criminal activities, they may also be useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion. The widespread use of this method of communication by many groups

espousing various causes attests its major importance."

And at page 146:

"Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas."

Defendants further argue, "This Court and the United States Supreme Court, in the above decisions, have held unconstitutional restraints on the free and unfettered distribution of circulars, pamphlets and other forms of expression; those restraints have ranged from licensing provisions to across the board prohibitions on such distribution by way of injunction. All were struck down by the courts. In the instant case defendants are faced with an injunction prohibiting their distribution of any literature, anywhere in a village of over 18,000 people. Such a restraint clearly violates both the United States and Illinois constitutions."

Plaintiff contends that the right to free speech is not unqualified, and that defamatory attacks upon plaintiff personally, with the purpose of having plaintiff abandon his lawful business practices and forcing him to sign the "No solicitation" agreement, are properly the subject of prior restraint. Cases cited include *Austin Congress Corp.* v. *Mannina*, 46 Ill. App.2d 192, 196 N.E.2d 33 (1964), where this court affirmed an injunction that had

been issued against defendants restraining them from picketing plaintiff's nursing home and publicly stating, among other things, that plaintiff was in violation of the building code. Defendants contended that there was an absolute right to picket provided that such picketing was peaceful, truthful and informational, and the court said (p. 203):

> "That picketing for the purpose of harassment and to cause economic ruination even under the cloak of publicizing the truth of a purported building code violation is violative of the public policy of the State of Illinois is well settled. In *Carpenters' Union* v. *Citizens' Committee to Enforce Landis Award*, 333 Ill. 225, 246, 164 NE 393, our Supreme Court stated:
>
> > 'No persons, individually or by combination, have the right to directly or indirectly interfere with or disturb another in his lawful business or occupation or for the sake of compelling him to do some act which in his own judgment his own interest does not require. Losses wilfully caused by another from motives of malice to one who seeks to exercise and enjoy the fruits and advantages of his own enterprise, industry, skill or credit will sustain an action.'
>
> "And at 247:
>
> > 'Coercion is as easily accomplished without threats of violence as with them, and fear of loss of or injury to business unless one submits to demands is as effective as fear of violence to his person. No person has a right to make war on another and to compel others to break off business relations with him to his injury. If an evil motive does not make a lawful act unlawful, it is equally true that what may be regarded as a good motive will not make an unlawful act lawful.'"

Plaintiff further cites *Carpenters' Union* v. *Citizens Comm.*, 333 Ill. 225, 164 N.E. 393 (1928), where the

Carpenters' Union sought an injunction against the Citizens Committee to Enforce the Landis Award, a not-for-profit corporation, and certain individuals to restrain the defendants from, *inter alia*, interfering with plaintiff's business and "from attempting to interfere with or disturb or prevent employment of complainants by newspaper advertisements, telephone messages, letters, circulars, notices, personal conversations, economic pressure or any other means." There the court said (p. 238):

> "No person or combination of persons has the right, directly or indirectly, to interfere with or disturb another in his lawful business or occupation or for the sake of compelling him to do some act which in his own judgment he does not approve. Losses caused by willful interference, without legal cause or justification, with the relations of employer and employee or with their freedom to contract are maliciously caused and will sustain an action at law, or, in a proper case, an injunction may be obtained to restrain the wrongful interference."

On the basic issue of picketing and distribution of literature, and after examining the injunctive order, its findings and relief granted, we think it is obvious that the trial court accepted the guidelines and principles set forth in defendants' authorities by its denial of injunctive relief as to plaintiff's place of business, but subordinate to plaintiff's "right of privacy" in the area of his residence and church. Therefore, no discussion is required here as to the basic issue of defendants' right to picket and to distribute literature, as set forth herein.

On the issue as to plaintiff's "right of privacy" in Westchester in the area of his residence, defendants argue that they have in no way criticized or even discussed plaintiff's private life or private conduct. The only references made by the defendants about the plaintiff concern

his sales techniques and gave defendants' opinion as to the effect of such sales techniques on defendants' community. Defendants argue that the sales techniques and practices of real estate brokers, including those of the plaintiff, are the subject of great public interest and concern, particularly the problem created by real estate sales techniques which may be characterized as "panic peddling." Defendants assert that "groups such as the Organization for a Better Austin, which are attempting to create a stably integrated community are thwarted by the fear and panic created as a result of real estate brokers' active solicitation by phone call, business card and personal visit to homes in blocks adjoining segregated areas. A stable integrated community is one where people of all races reside in all parts of the community and not one where the periphery of the Negro ghetto is integrated only between the time the first Negro moves in and last white moves out. There are few domestic social issues more pressing than the one with which the defendants are attempting to deal," and that "real estate sales techniques should be a matter of personal privacy would be a surprising result in the light of the growing public concern and interest in the effect of real estate practices on one of America's most pressing social problems — race relations."

Defendants' authorities on this point include *Time, Inc. v. Hill*, 385 U.S. 374 (1967). In that case a magazine was alleged to have falsely reported that a new play portrayed an experience suffered by plaintiff and his family when held hostage in plaintiff's home. Plaintiff sued for damages under the New York right of privacy statute. There the Supreme Court held the article involved to be constitutionally protected, and the court said (p. 388):

> "The guarantees for speech and press are not the preserve of political expression or comment upon pub-

lic affairs, essential as those are to healthy govern-
ment. One need only pick up any newspaper or maga-
zine and comprehend the vast range of published
matter which exposes persons to public view, both
private citizens and public officials. Exposure of the
self to others in varying degrees is a concomitant of
life in a civilized community. The risk of this ex-
posure is an essential incident of life in a society
which places a primary value on freedom of speech
and of press. 'Freedom of discussion, if it would
fulfill its historic function in this nation, must em-
brace all issues about which information is needed
or appropriate to enable the members of society to
cope with the exigencies of their period."

Defendants further argue that "the significance of *Time*
v. *Hill* is magnified by the fact that it articulated consti-
tutional protections for speech and press in the context
of subsequent punishment or subsequent compensation for
alleged speech and press excesses, while here the constitu-
tional issues are posed in the context of prior restraint
— an injunction. The constitutional protections against
prior restraint on speech and the press have traditionally
been and are to this day greater than those applicable
to 'subsequent punishment' for the exercise of speech and
press freedoms. It is clear that defendants' constitution-
ally protected right to distribute leaflets cannot be en-
joined on the basis of what is here a nonexistent right of
privacy."

Plaintiff argues that the importance of privacy has been
recognized and supported by the United States Supreme
Court. Authorities include *Breard* v. *Alexandria*, 341 U.S.
622 (1951), where the Supreme Court sustained an ordi-
nance prohibiting door-to-door salesmen and said (pp.
625-6):

"All declare for liberty and proceed to disagree
among themselves as to its true meaning. There is

equal unanimity that opportunists, for private gain, cannot be permitted to arm themselves with an acceptable principle, such as * * * a free press, and proceed to use it as an iron standard to smooth their path by crushing the living rights of others to privacy and repose."

Plaintiff further contends that injunctive relief is the proper remedy where privacy has been wrongfully invaded. Authorities cited include *Pipe Machinery Co.* v. *DeMore*, 76 N.E.2d 725 (1947) (appeal dismissed 149 Ohio St. 582, 79 N.E.2d 910 (1948)), and *Hebrew Home* v. *Davis*, 235 N.Y.S.2d 318 (1962). In *Pipe Machinery Co.*, striking employees went to the residences of eight working employees of plaintiff, carrying placards naming each employee, describing him as a "scab" and bearing legends such as "How can you stand to live so near him?" The court held that the purpose of the picketing in the vicinity of the employees' residences was not to give the public information as to the merits of the strike but to intimidate or persuade them to join the strikers. The court held that an injunction restraining the defendants from picketing and circulating placards at or near the employees' residences did not infringe the rights of free speech, stating (p. 727):

> "We are not dealing here with a limitation upon the right of free speech. It is obvious that picketing in this case was not for the purpose of disseminating any information as to the strike. Picketing interfered with the quiet and peaceful environment of the homes and thereby established conditions making more difficult the raising of a family and the maintenance of a home."

Also, in *Hebrew Home* v. *Davis*, the court said (p. 324):

> "There is not a scintilla of justification shown for this conduct. Truly it is shocking, reprehensible and outrageous, deserving the unhesitating and scathing

rebuke of the court. Conducted at a considerable distance from the hospital, in an exclusively residential area, it was apparently aimed to cause unspeakable embarrassment, humiliation and mortification to the named jurist and his family. It represents a form of direct and unmitigated coercion and terrorism that should be roundly denounced and sternly condemned. Not within any conceivable limit of the right to free speech and the right to inform, it represents a mean, foul and sinister blow, one to which decent unionism would not stoop."

Plaintiff further cites an article on residential picketing written by Professor Alfred Kamin, of the Loyola University School of Law, in which it is said (pp. 201-202, Northwestern University Law Review, Vol. 61):

"In every reported American case, residential picketing has been either declared illegal under criminal statutes and municipal regulations, banned by injunction, or proscribed by administrative cease and desist orders."

Plaintiff asserts that "defendants' activities in Westchester share the same vice condemned in the residential picketing cases. The OBA activities in Westchester are coercive not informative. They disrupt family life and interfere with the right of privacy. They are not entitled to protection under the guise of free speech."

Finally, defendants contend that the injunction here is overly broad and that the trial court erred in enjoining defendants from picketing anywhere in the Village of Westchester. Defendants assert that the trial court issued an injunction against picketing by defendants anywhere in the Village of Westchester, "absent any allegation or evidence by the plaintiff or finding by the court that defendants had engaged in *any* picketing in the village of Westchester." Defendants further state that if there had been any evidence of defendants' picketing in West-

chester, the injunction entered here, prohibiting picketing anywhere in this village of over 18,000 people, would be the kind of "blanket prohibition" on picketing which was condemned as violating the First Amendment. Cited is *Centennial Laundry Co.* v. *West Side Organization*, 34 Ill.2d 257, 215 N.E.2d 443 (1966), where it is said (p. 266):

> "These blanket prohibitions are unrelated to the purpose for which the picketing, distribution of literature or demonstrating might be conducted, and they are so sweeping and imprecise as to offend constitutional guarantees of freedom of speech, press and assembly."

We conclude that the trial court was correct in finding: "9. That defendants' activities in Westchester have invaded plaintiff's right of privacy, causing irreparable harm, and the plaintiff had no adequate remedy at law," and in granting injunctive relief in Westchester, the area of plaintiff's home. The purpose of the defendants was not to inform the public of a matter of public interest, but the sole purpose was to force plaintiff to sign a "No solicitation" agreement. There was no evidence to show that plaintiff was engaged in "panic peddling" in Westchester or that he intended to do business in Westchester. Coercion, not speech, was the purpose and object of defendants' activities. As said in *Pipe Machinery Co.* v. *DeMore* (p. 727):

> "The allowable area of economic conflict should not be extended to an invasion of the privacy of the home. • • •
>
> "The common law has always treated the home of a person with great respect. The home is referred to as a man's 'castle' or as his 'sanctuary.' Picketing homes and the use of language referring to the head of the house as a 'scab' would not aid in establishing the proper environment for a home."

As said in *Hebrew Home* v. *Davis*, the situation here "represents a form of direct and unmitigated coercion and terrorism" that should not be permitted.

We find no merit here in defendants' charge that the injunction was overly broad. The area of defendants' activities in Westchester, a city of 18,000, was broad, and no prejudice to defendants is apparent or demonstrated by the inclusion of the entire Village as the restraint area. We believe the public policy of this state strongly favors protection of the privacy of home and family from encroachments of the nature of defendants' activities, and defendants' right of "free speech" is not involved here.

Therefore, for the reasons given, the order of the Circuit Court of Cook County is affirmed.

AFFIRMED.

ADESKO, *P.J.*, and BURMAN, *J.*, concur.

On the same day to-wit, September 29th, 1969, the following proceedings were had:

Jerome M. Keefe,
Appellee

No. 53057 vs.

Organization for a Better Austin, Justin M. McCarthy, William Holmes, and Kathy Metropoulos,
Appellants

} Appeal from the Circuit Court of Cook County

AFFIRMING ORDER

The order appealed from of the Circuit Court of Cook County is AFFIRMED and Appellee recover costs from Appellants.

Execution may issue.

Supreme Court of the United States

No. 1484 ----, October Term, 19 69

Organization for a Better Austin, et al.,

Petitioners,

v.

Jerome H. Keefe

Order allowing certiorari. Filed June 22 ----, 19 70.

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois, Appellate Court, First District, is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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No. 1484

In the

Supreme Court of the United States

OCTOBER TERM, 1969

ORGANIZATION FOR A BETTER AUSTIN, et al.,

Petitioners,

vs.

JEROME M. KEEFE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

Petitioners, Organization for a Better Austin, Justin M. McCarthy, William Holmes, and Kathy Metropoulos, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Appellate Court of Illinois entered in the above case on September 29, 1969.

OPINION BELOW

The opinion of the Appellate Court of Illinois is reported at 115 Ill. App. 2d 236, 253 N.E.2d 276 (1969), and is set out in full as an appendix to this petition.

JURISDICTION

The judgment of the Appellate Court of Illinois, First District, was entered on September 29, 1969. On October 30, 1969, a petition for rehearing was denied, but on that date the opinion entered September 29, 1969 was modified. A timely petition for leave to appeal was denied by the Supreme Court of Illinois on January 27, 1970, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether the First Amendment prohibits a state court from enjoining the peaceful and orderly distribution of noncommercial leaflets which are critical of a broker's real estate practices.

2. Whether the peaceful and orderly distribution of noncommercial leaflets and picketing can be prohibited by injunction everywhere in a city of 18,000.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution,
First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution,
Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The petitioners since December 20, 1967, have been enjoined "from passing out pamphlets, leaflets or literature of any kind, and from picketing anywhere in the City of Westchester, Illinois", a city of 18,000 (a. 11).*

The petitioner, Organization for a Better Austin ("OBA"), is a racially integrated community organization in the Austin neighborhood in the city of Chicago (a. 17, 20). The individual petitioners are two of the officers of the OBA and the chairman of its Real Estate Practices Committee (a. 16, 22).

A major problem facing this neighborhood in Chicago is the rapidly changing racial composition of its residents (a. 17; A. 2a). In its efforts to stabilize the community, the OBA opposed and protested certain real estate practices which it felt fomented panic among the residents of the blocks undergoing racial change; specifically, the OBA objected to any solicitation of real estate listings in areas of racial change (a. 13, 16, 19, 22).

Respondent, Jerome Keefe, is a real estate broker whose office is in the Austin neighborhood (a. 13, 14). In

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* The Abstract of Record filed by petitioners in the Appellate Court of Illinois is filed herewith for reference (in addition to the certified record) and is referred to herein as "a." Reference to the materials appended to this petition will be identified by "A." before the page number.

August, 1967 respondent solicited real estate listings in Austin by having printed cards distributed door to door (a. 14-16). Subsequently, at a community meeting in Austin called by the OBA, respondent discussed his real estate practices and was asked to sign a no-solicitation pledge identical to one signed by other brokers (a. 13, 16, 19-20, 22-24).

Thereafter, during September and October, 1967, members of the OBA on five different occasions distributed leaflets in respondent's city of residence, Westchester, Illinois, a suburb of Chicago. These leaflets were critical of respondent's real estate practices in the Austin neighborhood of Chicago (a. 2-3, 10-11; Plaintiff's Exhibit 1; Defendants' Exhibit 1, 2 and 3; see Additional Abstract of Record, pp. 14-15, which is a part of the certified record from the Appellate Court, First District; see also the certified Additional Record from the Circuit Court of Cook County). On several days leaflets were given to persons in a Westchester shopping center (a. 6, 11, 19, 23). On two other occasions leaflets were passed out in front of respondent's church in Westchester (a. 6, 11, 19, 23). Leaflets were also left at residences in respondent's neighborhood; for example, they were left in door handles (a. 6, 11, 21, 23-24).

The trial court found that the "distribution of leaflets was on all occasions conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic, and did not precipitate any fights, disturbances or other breaches of the peace" (a. 11).

How Federal Question Is Presented

Respondent sought an injunction in the Circuit Court of Cook County, Illinois, to enjoin the distribution of these leaflets. Petitioners in their pleading answered that

"the activities that they engaged in were an exercise of the rights of freedom of speech and assembly guaranteed to them by the Constitution of the United States and of the State of Illinois" (a. 9). The trial court rejected petitioners' constitutional defense, finding that "defendants have no right to distribute the said leaflets in Westchester, . . ." and that "defendants' activities in Westchester have invaded plaintiff's right of privacy, . . ." (a. 11). On December 20, 1967, the trial court entered a temporary injunction enjoining petitioners "from passing out pamphlets, leaflets or literature of any kind, and from picketing, anywhere in the City of Westchester, Illinois" a. 11).

Petitioners took a direct appeal to the Supreme Court of Illinois, which that court, on the ground that it had no jurisdiction on direct appeal in this case, transferred to the Appellate Court of Illinois, First District.

The Appellate Court of Illinois, First District, affirmed the injunction order in a judgment and opinion entered September 29, 1969, which opinion was modified on October 30, 1969. The Appellate Court of Illinois held that petitioners' distribution of leaflets in Westchester is not protected by the First Amendment because "[t]he purpose of the defendants [petitioners] was not to inform the public of a matter of public interest, but the sole purpose was to force plaintiff to sign a 'No Solicitation' agreement," and that respondents' "right of privacy" was invaded (A. 16a). The Appellate Court also held that this injunction which prohibits distribution of literature of any kind anywhere in Westchester, a city of 18,000, is not overly broad (A. 17a). A petition for rehearing was denied, and the Supreme Court of Illinois on January 27, 1970, denied a timely petition for leave to appeal to that court.

This temporary injunction order, which has been in effect since December 20, 1967, is final for the purpose of this Court's certiorari jurisdiction because the state courts, after an evidentiary hearing, have decided the merits of this case in connection with the temporary injunction, and petitioners have no other defense to offer with respect to the permanent injunction; therefore, the state court judgment has disposed of the case as a practical matter.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF APPELLATE COURT OF ILLINOIS WHICH SUSTAINED AN INJUNCTION PROHIBITING PEACEFUL DISTRIBUTION OF LEAFLETS CONFLICTS WITH FIRST AMENDMENT PRINCIPLES FIRMLY ESTABLISHED BY THIS COURT.

A. The No-Prior Restraint Doctrine

Prior restraints on the publication and distribution of non-commercial leaflets and other literature, by way of injunction or statute, have clearly been prohibited by this Court's decisions. *Near* v. *Minnesota,* 283 U.S. 697, 713, 720-722 (1937); *Lovell* v. *Griffin,* 303 U.S. 444, 452 (1938). Distribution door to door is a method of dissemination protected by the First Amendment. *Martin* v. *Struthers,* 319 U.S. 141, 145-146 (1943). The Appellate Court of Illinois held that the peaceful and orderly distribution of leaflets is subject to prior restraint by injunction based on an asserted "right of privacy" and on the purpose of distribution which the court considered "coercive" (A. 16a-17a). It relied solely on cases involving picketing and commercial solicitation to sustain this injunction against distribution of non-commercial leaflets (A. 13a-17a). Thus, this Court's doctrine of no-prior restraint has been substantially eroded by the Illinois courts.

B. The Relevance of the Disseminators' Purpose

The Appellate Court of Illinois affirmed the injunction at bar on the ground, *inter alia,* that "The purpose of the defendants was not to inform the public of a matter of public interest, but the sole purpose was to force plaintiff to sign a 'No Solicitation' agreement" (A. 16a). This Court has not limited the protections of the First

Amendment to those whose only interest is public information. *Terminiello* v. *City of Chicago*, 337 U.S. 1, 4 (1949). Indeed, the goal of most speech is more than public information, for example, individuals espousing causes and candidates seeking office do not speak solely to inform, but rather to influence events. Speech may inform; it may embarrass, expose and persuade. Nevertheless, it has traditionally been protected against prior restraint by this Court. The Appellate Court of Illinois now holds that a disseminator's purpose determines the scope of the First Amendment's protection against prior restraint of literature distribution. This is a dangerous precedent.

II. THE TERRITORIAL ZONE OF PRIVACY CREATED BY THIS INJUNCTION AGAINST THE DISTRIBUTION OF LITERATURE ANYWHERE IN RESPONDENT'S CITY OF RESIDENCE CONFLICTS WITH DECISIONS OF THIS COURT.

This Court decided in *Time* v. *Hill*, 385 U.S. 374 (1967) that First Amendment rights took precedence over the alleged privacy interest asserted there. The Court noted:

> "One need only pick up any newspaper or magazine to comprehend the vast range of published matter which exposes persons to public view, both private citizens and public officials. Exposure of the self to others in varying degrees is a concomitant of life in a civilized community. The risk of this exposure is an essential incident of life in a society which places a primary value on freedom of speech and of press." *Time* v. *Hill*, 385 U.S. at 388.

In contrast, the injunction issued and affirmed by the courts of Illinois on the basis of an asserted right of privacy has insulated respondent everywhere in his city of residence from exposure and criticism by petitioners. This injunction, which has made an entire city "off limits" to the distribution of literature, imposes essentially the same restraints as those struck down by this Court in *Lovell* v. *Griffin,* 303 U.S. 444, 451 (1938).

This case also raises the issue of whether a suburb can be totally insulated from the distribution of leaflets which concern the involvement of one of its residents in a matter of major public concern in another part of the metropolitan area.

The alleged privacy justification employed by the Appellate Court of Illinois to support this injunction would also support an injunction against a newspaper, distributed door to door in respondent's city, which contained the same criticism of respondent's real estate practices.

III. THE INJUNCTION IS ALSO UNCONSTITUTIONAL BECAUSE IT IS OVERBROAD.

In addition to a blanket prohibition on the distribution of literature, the injunction also contains a prohibition on picketing anywhere in Westchester, a city of 18,000. The scope of this injunction against picketing, which is coterminus with city boundaries, is unrelated to the reasons for which picketing can be restricted or enjoined, and is thus overbroad. *Thornhill* v. *Alabama,* 310 U.S. 8, 104-105 (1940) Furthermore, there is no allegation or evidence that petitioners picketed in Westchester.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Appellate Court of Illinois.

Respectfully submitted,

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APPENDIX

Opinion of the Appellate Court of Illinois, First District

No. 53057

JEROME M. KEEFE,
Plaintiff-Appellee,
v.
ORGANIZATION FOR A BETTER AUSTIN, JUSTIN M. MCCARTHY, WILLIAM HOLMES, and KATHY METROPOULOS,
Defendants-Appellants.

Appeal From Circuit Court, Cook County.

Honorable DANIEL COVELLI, Presiding.

MR. JUSTICE MURPHY DELIVERED THE OPINION OF THE COURT.

Defendants appeal from an interlocutory order which found that their activities in Westchester, Illinois, a suburb of Chicago where plaintiff, a real estate broker, resided, "invaded plaintiff's right of privacy." The order temporarily restrained defendants from passing out literature and from picketing "anywhere in the City of Westchester," but denied injunctive relief as to plaintiff's place of business in the Austin neighborhood of Chicago. Defendants' direct appeal to the Illinois Supreme Court was transferred to this court on the ground that it had no jurisdiction on direct appeal in this case.

On appeal the determinative issue is whether the temporary injunction enjoining the picketing and distribution of leaflets in the area of the plaintiff's home denied defendants' freedom of speech and press under the First and Fourteenth Amendments to the United States Constitution and Article II, Section 4 of the Illinois Constitution.

Plaintiff is a real estate broker operating in the Austin area of the City of Chicago. From time to time he solicits listings from property owners by door-to-door distribution of his business card. The card contains the name "Jerry's Real Estate" and gives his business address and telephone number. It bears the legend, "We invite your listings. We have prospective buyers for income property and residential property in the Austin area."

The Austin area is undergoing racial change, and the defendant Organization for a Better Austin [OBA], an integrated community organization, has been working to keep white residents in the community. In its efforts to stabilize the community and to deal rationally with integration, the OBA is attempting to stop "panic peddling" by those brokers who exploit residents of racially changing areas by fomenting panic among them. Among its committees is the Real Estate Practices Committee, which deals with "panic peddlers." The OBA objects to any form of solicitation of real estate listings, and it has obtained written agreements from a number of local real estate brokers covering selling practices, which agreement plaintiff refused to sign.

In order to induce plaintiff to stop these solicitations of real estate listings, defendant OBA initiated a program of picketing and leaflet distribution in the areas of his home and his place of business. The purpose of these activities admittedly was to make plaintiff agree to stop soliciting business. The Westchester leaflets gave plaintiff's home address and telephone number and urged Westchester residents to call plaintiff and tell him to sign the agreement. The leaflet contained the statement: "When he signs the Agreement we stop coming to Westchester."

At the trial, defendant William A. Holmes, when cross-examined about the primary motive for passing out "pluggers" in Westchester, said:

A. All right, I'll answer that by saying that my primary motive was to ask Mr. Keefe to make a public act of faith in the community where he is making his living, and because he failed to do this—in fact he said that we don't want a thing to do with you, and we don't care about your community—so we went out and decided to let his, let his neighbors know what he was doing to us.

Q. And, by doing this, you had hoped that he would finally sign this agreement that you submitted, is that right?

A. Yes, Sir.

Q. All right.

On October 4, 1967, plaintiff commenced the instant action for injunctive relief. In plaintiff's amended complaint it is alleged that the defendants were displeased with the manner in which plaintiff conducted his real estate business and accused him of being "a blockbuster (selling real estate to one Negro family and then frightening the other property owners in the neighborhood whereby they became panicky and began to offer their property for sale through plaintiff's real estate office), which course of conduct on the part of defendants commenced on or about August 15, 1967 and continued through October 1, 1967, and still continues without any justifiable cause, reason or excuse."

Plaintiff alleged that members of the OBA picketed his place of business and distributed literature through the community "criticizing him and impugning his reputation as an honest and law-abiding operator of a real

estate business," and attacked the business tactics employed by the plaintiff. The relief prayed for was an injunction restraining defendants from picketing his place of business and his home and from distributing derogatory pamphlets.

Defendants answered and admitted picketing and the distribution of circulars, and stated "that the activities that they engaged in were an exercise of the rights of freedom of speech and assembly guaranteed to them by the Constitution of the United States and of the State of Illinois." Defendants denied that plaintiff was entitled to any injunctive relief against them.

After a hearing, in which both sides introduced the testimony of witnesses and exhibits, the trial court entered an order on December 20, 1967, which included the following findings:

4. That on September 9, 16, and 30, 1967, and October 22, 1967, some members of the Organization went to Westchester, Illinois, a suburb of Chicago, where the plaintiff resides, and distributed leaflets consisting of mimeographed sheets containing critical descriptions of the manner in which plaintiff was conducting his real estate business in the Austin neighborhood;

5. That said leaflets were distributed in several locations at various times on the said dates: to residents of some homes in the neighborhood of plaintiff's place of residence, to some people in a shopping center in Westchester, and to some parishioners on their way to or from Mass at the Divine Infant Church in Westchester;

6. That the said distribution of leaflets was on all occasions conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian

or vehicular traffic, and did not precipitate any fights, disturbances or other breaches of the peace;

7. That the defendants have a right to engage in a peaceful picketing of the plaintiff's place of business;

8. That defendants have no right to distribute the said leaflets in Westchester, the suburb in which plaintiff resides;

9. That defendants' activities in Westchester have invaded plaintiff's right of privacy, causing irreparable harm, and that plaintiff has no adequate remedy at law.

The order granted plaintiff injunctive relief as to his home and denied it as to his place of business. This is the order from which defendants appeal.

As to the distribution of leaflets, defendants assert that a number of cases cited by the United States and Illinois Supreme Courts have clearly established that the distribution of non-commercial pamphlets, leaflets and literature is fully protected under the State and Federal constitutional free speech and press clauses against prior restraint. On this point defendants' authorities include: *Lovell* v. *Griffin,* 303 U.S. 444 (1938), and *Schneider* v. *Town of Irvington,* 308 U.S. 147 (1939).

In *Lovell* v. *Griffin,* a State ordinance prohibited the distribution of literature of any kind within the limits of the City of Griffin without the permission of a city official. The Supreme Court found this provision to be an unconstitutional restraint on freedom of speech and the press and stated (p. 452):

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been his-

> toric weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.
> • • •
>
> "The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U.S. 727, 733."

In *Schneider* v. *Town of Irvington*, State ordinances prohibited the distribution of literature without a license from the chief of police. There the Supreme Court held the licensing made impossible the free and unhampered distribution of pamphlets and said (p. 164):

> "As said in *Lovell* v. *City of Griffin, supra*, pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees."

Defendants also cite the following cases where the Supreme Court of Illinois held that ordinances which licensed the distribution of pamphlets and circulars violated Section 4 of Article II of the Constitution of Illinois: *Village of South Holland* v. *Stein*, 373 Ill. 472, 26 N.E.2d 868

(1940), and *City of Blue Island* v. *Kozul*, 379 Ill. 511, 41 N.E.2d 515 (1942).

In *Village of South Holland* v. *Stein*, a village ordinance made it unlawful for anyone to go to a private residence for the purpose of soliciting without a license. There the court cited *Lovell* v. *City of Griffin* and *Schneider* v. *Town of Irvington* and said (p. 479):

> "The constitution of Illinois is even more far-reaching than that of the constitution of the United States in providing that every person may speak freely, write and publish on all subjects, being responsible for the abuse of that liberty. Webster's International Dictionary defines the word 'publish' as meaning 'to bring before the public as for sale or distribution.'"

In *City of Blue Island* v. *Kozul*, an ordinance provided that all "peddlers" have a license. Defendant, a member of Jehovah's Witnesses, walked up and down the streets with a 15-year old boy, carrying a sign and offering to sell a publication for five cents. In reversing the conviction the court held the ordinance unconstitutional. There the court said (p. 514):

> "Section 4 of article 2 of the constitution of Illinois provides: 'Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.' The first amendment to the constitution of the United States provides: 'Congress shall make no law * * * abridging the freedom of speech, or of the press.' It has been frequently held that the freedom of speech and of the press secured by the first amendment against abridgement by the United States is similarly secured to all persons by the fourteenth amendment against abridgement by a State."

And at page 515:

> "Recent pronouncements of the Supreme Court of the United States make it obvious that the ordinance here in question, as applied to the sale and distribution of the magazines and leaflets by the defendant is unconstitutional and a violation of the right of freedom of speech and of the press. *Lovell* v. *City of Griffin, supra*; *Schneider* v. *Town of Irvington, supra.*"

Defendants further argue that injunctions restraining the distribution of literature are as much prohibited as the ordinances found unconstitutional by the Illinois and United States Supreme Courts. (*Near* v. *Minnesota*, 283 U.S. 697 (1931); *Montgomery Ward & Co.* v. *United Employees*, 400 Ill. 38, 79 N.E.2d 46 (1948).) Defendants further cite *Martin* v. *Struthers*, 319 U.S. 141 (1943), where the United States Supreme Court held that Jehovah's Witnesses had a constitutional right to distribute their information from door to door. The right to distribute was recognized even though the Witnesses rang doorbells at a time of the day when many residents were accustomed to be sleeping. Despite this disturbance, the right to distribute information was upheld. Defendants note that in the instant case no such disturbance was created and the leaflets were merely placed in or near the doors of the homes and no doorbells were rung and none of the residents complained. In *Martin* v. *Struthers*, the court said (p. 145):

> "While door to door distributors of literature may be either a nuisance or a blind for criminal activities, they may also be useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion. The widespread use

> of this method of communication by many groups espousing various causes attests its major importance."

And at page 146:

> "Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas."

Defendants further argue, "This Court and the United States Supreme Court, in the above decisions, have held unconstitutional restraints on the free and unfettered distribution of circulars, pamphlets and other forms of expression; those restraints have ranged from licensing provisions to across the board prohibitions on such distribution by way of injunction. All were struck down by the courts. In the instant case defendants are faced with an injunction prohibiting their distribution of any literature, anywhere in a village of over 18,000 people. Such a restraint clearly violates both the United States and Illinois constitutions."

Plaintiff contends that the right to free speech is not unqualified, and that defamatory attacks upon plaintiff personally, with the purpose of having plaintiff abandon his lawful business practices and forcing him to sign the "No solicitation" agreement, are properly the subject of prior restraint. Cases cited include *Austin Congress*

Corp. v. *Mannina,* 46 Ill. App.2d 192, 196 N.E.2d 33 (1964), where this court affirmed an injunction that had been issued against defendants restraining them from picketing plaintiff's nursing home and publicly stating, among other things, that plaintiff was in violation of the building code. Defendants contended that there was an absolute right to picket provided that such picketing was peaceful, truthful and informational, and the court said (p. 203):

> "That picketing for the purpose of harassment and to cause economic ruination even under the cloak of publicizing the truth of a purported building code violation is violative of the public policy of the State of Illinois is well settled. In *Carpenters' Union* v. *Citizens' Committee to Enforce Landis Award,* 333 Ill. 225, 246, 164 NE 393, our Supreme Court stated:
>
> > 'No persons, individually or by combination, have the right to directly or indirectly interfere with or disturb another in his lawful business or occupation or for the sake of compelling him to do some act which in his own judgment his own interest does not require. Losses wilfully caused by another from motives of malice to one who seeks to exercise and enjoy the fruits and advantages of his own enterprise, industry, skill or credit will sustain an action.'
>
> "And at 247:
>
> > 'Coercion is as easily accomplished without threats of violence as with them, and fear of loss of or injury to business unless one submits to demands is as effective as fear of violence to his person. No person has a right to make war on another and to compel others to break off business relations with him to his injury.

> If an evil motive does not make a lawful act unlawful, it is equally true that what may be regarded as a good motive will not make an unlawful act lawful.'"

Plaintiff further cites *Carpenters' Union* v. *Citizens Comm.*, 333 Ill. 225, 164 N.E. 393 (1928), where the Carpenters' Union sought an injunction against the Citizens Committee to Enforce the Landis Award, a not-for-profit corporation, and certain individuals to restrain the defendants from, *inter alia*, interfering with plaintiff's business and "from attempting to interfere with or disturb or prevent employment of complainants by newspaper advertisements, telephone messages, letters, circulars, notices, personal conversations, economic pressure or any other means." There the court said (p. 238):

> "No person or combination of persons has the right, directly or indirectly, to interfere with or disturb another in his lawful business or occupation or for the sake of compelling him to do some act which in his own judgment he does not approve. Losses caused by willful interference, without legal cause or justification, with the relations of employer and employee or with their freedom to contract are maliciously caused and will sustain an action at law, or, in a proper case, an injunction may be obtained to restrain the wrongful interference."

On the basic issue of picketing and distribution of literature, and after examining the injunctive order, its findings and relief granted, we think it is obvious that the trial court accepted the guidelines and principles set forth in defendants' authorities by its denial of injunctive relief as to plaintiff's place of business, but subordinate to plaintiff's "right of privacy" in the area of his residence and church. Therefore, no discussion is required

here as to the basic issue of defendants' right to picket and to distribute literature, as set forth herein.

On the issue as to plaintiff's "right of privacy" in Westchester in the area of his residence, defendants argue that they have in no way criticized or even discussed plaintiff's private life or private conduct. The only references made by the defendants about the plaintiff concern his sales techniques and gave defendants' opinion as to the effect of such sales techniques on defendants' community. Defendants argue that the sales techniques and practices of real estate brokers, including those of the plaintiff, are the subject of great public interest and concern, particularly the problem created by real estate sales techniques which may be characterized as "panic peddling." Defendants assert that "groups such as the Organization for a Better Austin, which are attempting to create a stably integrated community are thwarted by the fear and panic created as a result of real estate brokers' active solicitation by phone call, business card and personal visit to homes in blocks adjoining segregated areas. A stable integrated community is one where people of all races reside in all parts of the community and not one where the periphery of the Negro ghetto is integrated only between the time the first Negro moves in and last white moves out. There are few domestic social issues more pressing than the one with which the defendants are attempting to deal," and that "real estate sales techniques should be a matter of personal privacy would be a surprising result in the light of the growing public concern and interest in the effect of real estate practices on one of America's most pressing social problems — race relations."

Defendants' authorities on this point include *Time, Inc. v. Hill*, 385 U.S. 374 (1967). In that case a magazine was alleged to have falsely reported that a new play portrayed an experience suffered by plaintiff and his family when held hostage in plaintiff's home. Plaintiff sued for damages under the New York right of privacy statute. There the Supreme Court held the article involved to be constitutionally protected, and the court said (p. 388):

> "The guarantees for speech and press are not the preserve of political expression or comment upon public affairs, essential as those are to healthy government. One need only pick up any newspaper or magazine and comprehend the vast range of published matter which exposes persons to public view, both private citizens and public officials. Exposure of the self to others in varying degrees is a concomitant of life in a civilized community. The risk of this exposure is an essential incident of life in a society which places a primary value on freedom of speech and of press. 'Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."

Defendants further argue that "the significance of *Time v. Hill* is magnified by the fact that it articulated constitutional protections for speech and press in the context of subsequent punishment or subsequent compensation for alleged speech and press excesses, while here the constitutional issues are posed in the context of prior restraint — an injunction. The constitutional protections against prior restraint on speech and the press have traditionally been and are to this day greater than those applicable to 'subsequent punishment' for the exercise of speech and press freedoms. It is clear that defendants' constitutionally

protected right to distribute leaflets cannot be enjoined on the basis of what is here a nonexistent right of privacy."

Plaintiff argues that the importance of privacy has been recognized and supported by the United States Supreme Court. Authorities include *Breard* v. *Alexandria*, 341 U.S. 622 (1951), where the Supreme Court sustained an ordinance prohibiting door-to-door salesmen and said (pp. 625-6):

> "All declare for liberty and proceed to disagree among themselves as to its true meaning. There is equal unanimity that opportunists, for private gain, cannot be permitted to arm themselves with an acceptable principle, such as * * * a free press, and proceed to use it as an iron standard to smooth their path by crushing the living rights of others to privacy and repose."

Plaintiff further contends that injunctive relief is the proper remedy where privacy has been wrongfully invaded. Authorities cited include *Pipe Machinery Co.* v. *DeMore*, 76 N.E.2d 725 (1947) (appeal dismissed 149 Ohio St. 582, 79 N.E.2d 910 (1948)), and *Hebrew Home* v. *Davis*, 235 N.Y.S.2d 318 (1962). In *Pipe Machinery Co.*, striking employees went to the residences of eight working employees of plaintiff, carrying placards naming each employee, describing him as a "scab" and bearing legends such as "How can you stand to live so near him?" The court held that the purpose of the picketing in the vicinity of the employees' residences was not to give the public information as to the merits of the strike but to intimidate or persuade them to join the strikers. The court held that an injunction restraining the defendants from picketing and circulating placards at or near the employees' residences did not infringe the rights of free speech, stating (p. 727):

"We are not dealing here with a limitation upon the right of free speech. It is obvious that picketing in this case was not for the purpose of disseminating any information as to the strike. Picketing interfered with the quiet and peaceful environment of the homes and thereby established conditions making more difficult the raising of a family and the maintenance of a home."

Also, in *Hebrew Home* v. *Davis,* the court said (p. 324):

"There is not a scintilla of justification shown for this conduct. Truly it is shocking, reprehensible and outrageous, deserving the unhesitating and scathing rebuke of the court. Conducted at a considerable distance from the hospital, in an exclusively residential area, it was apparently aimed to cause unspeakable embarrassment, humiliation and mortification to the named jurist and his family. It represents a form of direct and unmitigated coercion and terrorism that should be roundly denounced and sternly condemned. Not within any conceivable limit of the right to free speech and the right to inform, it represents a mean, foul and sinister blow, one to which decent unionism would not stoop."

Plaintiff further cites an article on residential picketing written by Professor Alfred Kamin, of the Loyola University School of Law, in which it is said (pp. 201-202, Northwestern University Law Review, Vol. 61):

"In every reported American case, residential picketing has been either declared illegal under criminal statutes and municipal regulations, banned by injunction, or proscribed by administrative cease and desist orders."

Plaintiff asserts that "defendants' activities in Westchester share the same vice condemned in the residential picketing cases. The OBA activities in Westchester are

coercive not informative. They disrupt family life and interfere with the right of privacy. They are not entitled to protection under the guise of free speech."

Finally, defendants contend that the injunction here is overly broad and that the trial court erred in enjoining defendants from picketing anywhere in the Village of Westchester. Defendants assert that the trial court issued an injunction against picketing by defendants anywhere in the Village of Westchester, "absent any allegation or evidence by the plaintiff or finding by the court that defendants had engaged in *any* picketing in the village of Westchester." Defendants further state that if there had been any evidence of defendants' picketing in Westchester, the injunction entered here, prohibiting picketing anywhere in this village of over 18,000 people, would be the kind of "blanket prohibition" on picketing which was condemned as violating the First Amendment. Cited is *Centennial Laundry Co.* v. *West Side Organization*, 34 Ill.2d 257, 215 N.E.2d 443 (1966), where it is said (p. 266):

> "These blanket prohibitions are unrelated to the purpose for which the picketing, distribution of literature or demonstrating might be conducted, and they are so sweeping and imprecise as to offend constitutional guarantees of freedom of speech, press and assembly."

We conclude that the trial court was correct in finding: "9. That defendants' activities in Westchester have invaded plaintiff's right of privacy, causing irreparable harm, and the plaintiff has no adequate remedy at law," and in granting injunctive relief in Westchester, the area of plaintiff's home. The purpose of the defendants was not to inform the public of a matter of public interest, but the sole purpose was to force plaintiff to sign a "No solicitation" agreement. There was no evidence to show

that plaintiff was engaged in "panic peddling" in Westchester or that he intended to do business in Westchester. Coercion, not speech, was the purpose and object of defendants' activities. As said in *Pipe Machinery Co.* v. *DeMore* (p. 727):

> "The allowable area of economic conflict should not be extended to an invasion of the privacy of the home. * * *
>
> "The common law has always treated the home of a person with great respect. The home is referred to as a man's 'castle' or as his 'sanctuary.' Picketing homes and the use of language referring to the head of the house as a 'scab' would not aid in establishing the proper environment for a home."

As said in *Hebrew Home* v. *Davis,* the situation here "represents a form of direct and unmitigated coercion and terrorism" that should not be permitted.

We find no merit here in defendants' charge that the injunction was overly broad. The area of defendants' activities in Westchester, a city of 18,000, was broad, and no prejudice to defendants is apparent or demonstrated by the inclusion of the entire Village as the restraint area. We believe the public policy of this state strongly favors protection of the privacy of home and family from encroachments of the nature of defendants' activities, and defendants' right of "free speech" is not involved here.

Therefore, for the reasons given, the order of the Circuit Court of Cook County is affirmed.

AFFIRMED.

ADESKO, *P.J.*, and BURMAN, *J.*, concur.

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1484

ORGANIZATION FOR A BETTER AUSTIN, et al.,
Petitioners,

vs.

JEROME M. KEEFE,
Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District.

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Jerome M. Keefe respectfully suggests that the judgment of the Appellate Court of Illinois, First District, does not warrant review on writ of certiorari. The decision of the Appellate Court does not involve novel questions or decide an issue contrary to prior decisions of this Court. The Appellate Court of Illinois properly sustained an injunction prohibiting petitioners' unwarranted intrusion upon respondent's right of privacy. The First Amendment is not a license authorizing unreasonable harrassment of home, family and neighbors.

QUESTION PRESENTED FOR REVIEW

Whether the Appellate Court of Illinois struck a proper balance between petitioners' First Amendment rights and respondent's right of privacy.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated . . . "

STATEMENT OF FACTS

Respondent Jerry Keefe is a real estate broker whose office is in the Austin neighborhood of Chicago and whose residence is in Westchester, Illinois, approximately seven miles distant. (A. 13) The Austin neighborhood is undergoing rapid racial change. (A. 17) Petitioner Organization for a Better Austin (OBA) is a neighborhood organization which objects to door to door solicitation of real estate listings in the community. (Add'l. A. 9, 10) Mr. Keefe on occasion distributed door to door his business card which stated, "We invite your listing. We have prospective buyers for income property and residential property in the Austin area." and gave his name, business address and business telephone number. (Add'l A. 6)

In order to induce Mr. Keefe to "voluntarily" agree to cease all solicitation in the Austin area, members of the OBA went to Westchester and distributed handbills among his neighbors, at his church and at his local shopping center urging members of the community to call him and tell him to sign a non-solicitation agreement. (A. 6) His home address and telephone number were given and the handbills stated, "When he signs, we stay in Austin",

and "When he signs the agreement, we stop coming to Westchester", and similar legends. (Add'l A. 14, 15) OBA members were also actively engaged on numerous occasions in picketing and distributing handbills highly critical of Mr. Keefe at his place of business in Austin. (Add'l A. 4) The Appellate Court of Illinois held that the trial court properly refused to enjoin the OBA activities around Mr. Keefe's place of business but did sustain the finding of the chancellor that the OBA's activities in the community of Westchester constituted an invasion of Mr. Keefe's right of privacy. The temporary injunction order does not prohibit the OBA from communicating with Westchester residents by telephone, letter or newspaper advertising. It does prohibit their physical presence in the community either passing out leaflets or picketing until a full hearing on the merits of the case was concluded. (A. 11)

ARGUMENT

The Decision Of The Appellate Court of Illinois Is Consistent With Prior Decisions Of This Court. Protecting Respondent's Right Of Privacy Did Not Deny Petitioners' Freedom of Speech.

Neither the First Amendment right of free speech nor the right of privacy, which derives both from common law and the Fourth Amendment, are absolute. Indeed, this Court has had occasion during the present term to strike a balance between these rights. In *Rowan d/b/a American Book Service* v. *United States Post Office Department*, ... U.S. ....., 38 U.S. Law Week 4343 (Doc. No. 399, May 4, 1970) certain mail order houses and mailing list brokers challenged the constitutionality of an Act of Congress which permits a householder to have his name removed from mailing lists used to sell matters which the addressee in his sole discretion believes to be erotically arousing or sexually provocative, arguing that the statute violated their constitutional right to communicate. In sustaining the constitutionality of the statute, Mr. Chief Justice Burger stated as follows (p. 4345):

> "Without doubt, the public postal system is an indispensable adjunct of every civilized society and communication is imperative to a healthy social order. But the right of every person 'to be let alone' must be placed in the scales with the right of others to communicate."

The OBA argues that the First Amendment gives them the unrestricted right to be physically present in Mr. Keefe's home community distributing handbills until he

capitulates to their demands. Prior decisions of this Court do not establish such a right.

The Court has recognized that picketing, although a protected First Amendment activity, is not entitled to the same unfettered freedom that newspapers and periodicals enjoy. *Hughes* v. *Superior Court,* 339 U.S. 460 (1950). The physical presence of pickets may create tensions and induce actions which go beyond the mere communication of ideas. *Gregory* v. *City of Chicago,* 394 U.S. 11, 13 (1969). The handbill distribution here is similar to picketing. Although peacefully conducted, it involved personal confrontation, particularly in the distribution of handbills at church and in the shopping center. Moreover, and most importantly, the handbills contain a thinly disguised threat of direct action against the community. The handbills start out with the legend, "Residents of Westchester Beware. . . . " and contains the statement, "If you want us to stop coming to Westchester, call Jerry Keefe . . . " (Add'l A. 14, 15) The interest of Westchester residents in the community of Austin is no different than the interest of seven million other persons in metropolitan Chicago, except for the accident of Jerry Keefe's residence there. Westchester was the target of OBA activities for a single reason. It was hoped that these activities would cause neighbors to pressure Mr. Keefe or his family into capitulating to OBA demands. The harassment of family, friends and neighbors in Mr. Keefe's home neighborhood is clearly an unreasonable interference with his right of privacy.

The temporary injunction order, which is intended to preserve the status quo pending a full hearing on the merits, enjoined the OBA from "passing out pamphlets, leaflets or literature of any kind, and from picketing, anywhere in the City of Westchester, Illinois." (A. 11) It is only the physical presence of members of the OBA in

Westchester that is enjoined. They are at liberty to communicate with Mr. Keefe and his neighbors by letter, newspaper advertisement, telephone or any other form of communication which does not involve their bodily entrance into the community. The trial court struck a reasonable balance between the OBA's right to communicate and Mr. Keefe's right to privacy and repose in the area of his home.

CONCLUSION

If the home is not protected as a place of sanctuary, free from the contention and strife that accompany many day to day business and political activities, we will have decisions both in public and private life being made, not on the basis of personal conviction, but solely to reduce the clamor of the opposition. Citizens will be reluctant to take positions in either public or private life which are controversial for fear of the potential damage to family life and neighborhood tranquility.

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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JOHN F. DAVIS, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1969

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vs.

JEROME M. KEEFE,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

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On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

THE INJUNCTION AGAINST THE DISTRIBUTION OF NON-COMMERCIAL LITERATURE ANYWHERE IN A CITY OF 18,000 IS CONTRARY TO PRIOR DECISIONS OF THIS COURT.

Cases cited by respondent in his brief in opposition support petitioners' position that the injunction against the distribution of literature to which petitioners have been subject for over two years is in direct conflict with prior decisions of this Court. Respondent concedes on the basis of *Hughes* v. *Superior Court,* 339 U.S. 460 (1950), that newspapers and periodicals are entitled to "unfettered freedom" but attempts to justify the injunction by a false analogy to picketing. (Respondent's Brief in Opposi-

tion, p. 5; herein after "R.Br.") However, respondent ignores that this Court in *Hughes* stated that the "distribution of circulars" is entitled to the same freedom under the First Amendment (339 U.S. at 465).

It is clear that respondent does not assert the concept of privacy which was discussed in *Rowan dba American Book Service* v. *United States Post Office Department*, ... U.S. ....., 38 U.S. Law Week 4343 (Doc. No. 399, May 4, 1970) (R.Br. p. 4). *Rowan* only permitted recipients of certain kinds of mail to elect not to receive further mail from previous senders. To the contrary, respondent obtained through the courts of Illinois the power to censor the dissemination of literature to all residents in a city of 18,000. *Rowan,* like *Hughes,* demonstrates that the injunction at bar is not supported by the decisions of this Court.

Handbill distribution is an historic, widely used and inexpensive means of expressing ideas. This Court should not sanction its restriction on the false ground that because picketing can sometimes be restricted so can handbill distribution. First Amendment rights are too precious for such easy subversion.

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ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

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ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Appellate Court of Illinois is reported at 115 Ill. App. 2d 236, 253 N.E.2d 276 (1969), and is set out in the separate Appendix (A. 70).

JURISDICTION

The judgment of the Appellate Court of Illinois, First District, was entered on September 29, 1969. On October 30, 1969, a petition for rehearing was denied, but on that date the opinion entered September 29, 1969 was modified. A timely petition for leave to appeal was denied by the Supreme Court of Illinois on January 27, 1970. The petition for certiorari was filed on April 27, 1970, and was granted on June 22, 1970. This Court's jurisdiction rests on 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution,
First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution,
Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTIONS PRESENTED

1. Whether an injunction barring petitioners from distributing noncommercial literature in respondent's city of residence is an unconstitutional restraint on freedom of speech and the press in violation of the First and Fourteenth Amendments.

2. Whether the peaceful and orderly distribution of noncommercial leaflets and picketing can be prohibited by injunction everywhere in a city of 18,000.

STATEMENT OF THE CASE

The petitioners, since December 20, 1967, have been enjoined by the Circuit Court of Cook County "from passing out pamphlets, leaflets or literature of any kind, and from picketing anywhere in the City of Westchester, Illinois," a city of 18,000. (A. 70)

The petitioner, Organization for a Better Austin ("OBA"), is a racially integrated community organization in the Austin neighborhood in the City of Chicago which is funded by the Austin Clergy Council (A. 32-33, 42, 56-57). The individual petitioners are an officer of the OBA, the chairman of its Real Estate Practices Committee, and an active member (A. 2, 5, 32, 49).

Respondent Jerome Keefe is a real estate broker whose office is in the Austin neighborhood. He resides in Westchester, Illinois, a suburb of Chicago (A. 17, 23, 34).

For a number of years, the boundary of the black segregated area of Chicago has moved progressively west to Austin, and a major problem facing this neighborhood is the rapidly changing racial composition of its residents (A. 32-35). In its efforts to stabilize the community, the OBA opposed and protested certain real

estate practices which it felt fomented panic among the residents of the blocks undergoing racial change; specifically, the OBA objected to any solicitation of real estate listings in areas of racial change (A. 18-19, 27, 35-36, 49). Justin McCarthy, President of the OBA, testified that the organization is seeking to prevent the mass exodus of white people from the community; it does not object to the entry of blacks into the community (A. 32-36, 42, 57).

Since 1961, respondent has from time to time actively sought out sellers of homes by means of flyers, phone calls and personal visits to residents of the area in which his office is located, without regard to whether the residents solicited have expressed any desire to sell their homes (A. 24-25, 29). From 1961 to 1966 respondent's office was on Cicero Avenue in Chicago (A. 23). During a substantial portion of that period, Cicero Avenue was on the boundary of racial change (A. 34). In November, 1966, he moved his office further west to Laramie Avenue which, by the time of the issuance of the injunction in 1967, was then on the western boundary of racial change (A. 22, 34-35).

On August 20, 1967, respondent solicited Austin residents to list their homes for sale by distributing printed cards door to door in the area immediately west of Laramie Avenue. Petitioners believed that this solicitation constituted panic peddling (A. 23-25, 36-37; Pl. Ex. 1; A. 10, 20; Def. Ex. 1; A. 11, 39-40; Def. Ex. 2; A. 12, 40; Def. Ex. 3; A. 13-15, 55-56). Petitioner Justin McCarthy testified that he believed that respondent's solicitation in an area near a racial boundary was enough to panic certain white residents into leaving Austin (A. 36-37).

Subsequently, the OBA arranged a community meeting with respondent to seek changes in his real estate practices (A. 17-18, 50-51). Residents of the blocks solicited attended (A. 38). Respondent was asked questions about his real estate practices. It was claimed he was a panic seller (A. 18, 27-29, 38, 51-53). At the conclusion of the discussion, respondent was asked to sign a pledge that he would not "solicit property, by phone, flyer or visit, in the community of Austin" (A. 19, 28-29, 61). Respondent refused to sign this no-solicitation agreement (A. 28-29, 53).

Thereafter, during September and October, 1967, members of the OBA on five different occasions distributed leaflets in respondent's city of residence, Westchester, Illinois, a suburb of Chicago. Four different leaflets were used. These leaflets were critical of respondent's real estate practices in the Austin neighborhood of Chicago. One of the leaflets set out the card respondent used to solicit listings; quoted him as saying "I only sell to Negroes," cited a Chicago Daily News article describing his real estate activities and accused him of being a "panic peddler" (Pl. Ex. 1; A. 10, 20). Another leaflet stated that respondent admitted he had never done business in anything but a racially changing neighborhood, that he only sold to Negroes, that he refused to sign a no-solicitation agreement, that "When he signs the agreement, we stop coming to Westchester," and that he has been accused of panic peddling, and urged the reader of the leaflet to call him and tell him to sign the no-solicitation agreement (Def. Ex. 2; A. 12, 40). A third leaflet was similar to this leaflet (Def. Ex. 1; A. 11, 39-40). The fourth leaflet had printed material on both sides (Def. Ex. 3; A. 13-15, 55-56). On one side was the text of a television

editorial discussing the OBA's campaign against panic peddling. The other side stated that complaints against respondent had been filed with a state department and the Mayor's Commission on Human Relations, and urged calls or telegrams to that Commission.

On several days, leaflets were given to persons in a Westchester shopping center (A. 39, 53, 55, 69). On two other occasions, leaflets were passed out to some parishioners on their way to or from respondent's church in Westchester (A. 40, 54-55, 69). Leaflets were also left at the doors of residences in respondent's neighborhood (A. 46-47, 53, 60, 69).

There is no allegation or evidence that petitioners picketed in Westchester.

The trial court found that petitioners' "distribution of leaflets was on all occasions conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic, and did not precipitate any fights, disturbances or other breaches of the peace" (A. 69).

Respondent sought an injunction in the Circuit Court of Cook County, Illinois, to enjoin the distribution of these leaflets.[1] On December 20, 1967, the trial court entered a temporary injunction enjoining petitioners "from passing out pamphlets, leaflets or literature of any kind, and from picketing, anywhere in the City of Westchester, Illinois" (A. 70).

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[1] Respondent also sought an injunction against picketing of his place of business in Austin, which on several occasions was peacefully picketed by petitioners (A. 4, 68-69). The trial court did not enjoin petitioners from picketing respondent's place of business (A. 70), and respondent did not appeal from this decision; thus, such picketing is not in issue before this court.

Petitioners took a direct appeal to the Supreme Court of Illinois. That court, on the ground that it had no jurisdiction on direct appeal in this case, transferred it to the Appellate Court of Illinois, First District.

The Appellate Court of Illinois, First District, affirmed the injunction order in a judgment and opinion entered September 29, 1969, which opinion was modified on October 30, 1969. The Appellate Court of Illinois held that petitioners' distribution of leaflets in Westchester is not protected by the First Amendment because "[t]he purpose of the defendants [petitioners] was not to inform the public of a matter of public interest, but the sole purpose was to force plaintiff to sign a 'No Solicitation' agreement," and that respondent's "right of privacy" was invaded (A. 85). The Appellate Court also held that this injunction which prohibits distribution of literature of any kind or picketing anywhere in Westchester, a city of 18,000, is not overly broad (A. 86). A petition for rehearing was denied, and the Supreme Court of Illinois on January 27, 1970, denied a timely petition for leave to appeal to that court.

SUMMARY OF ARGUMENT

I. A. The First Amendment protects the publication and distribution of both leaflets and newspapers. *Lovell* v. *Griffin*, 303 U.S. 444 (1938). The orderly distribution of literature door to door and in public places may not be prohibited. *Martin* v. *Struthers*, 319 U.S. 141 (1943); *Schneider* v. *State*, 308 U.S. 147 (1939). The distribution of literature by hand is a necessary and effective method of communication for those persons and groups who lack ready access to more expensive media.

B. This injunction which has been in effect for over two and one-half years is a prior restraint forbidden by the First Amendment. *Near* v. *Minnesota*, 283 U.S. 697 (1931). The injunction here dramatically illustrates the more serious impact and consequence of prior restraint as compared to subsequent punishment. Should this Court declare the injunction unconstitutional, petitioners will still have been barred from exercising First Amendment rights for over two and one-half years since they could not have challenged the injunction's constitutionality in a contempt proceeding brought for its violation. *Walker* v. *City of Birmingham*, 388 U.S. 307 (1967); *Faris* v. *Faris*, 35 Ill. 2d 305 (1966).

C. The Illinois courts justify disregard of these First Amendment principles on the basis of two factors, purpose and privacy. These justifications cannot withstand constitutional scrutiny.

1. Petitioners hoped that by informing the residents of Westchester of certain of respondent's real estate practices in Austin, respondent would agree to stop such practices. Here, as in most speech, the goal is more than public information; it is directed toward influencing events and action. The protections of the First Amendment are not limited to those whose only interest is public information. *Terminiello* v. *City of Chicago*, 377 U.S. 1 (1949). Disagreement with a disseminator's purpose does not justify a court in restraining the distribution of literature. *Near* v. *Minnesota*, 283 U.S. 697 (1931); *Garrison* v. *Louisiana*, 379 U.S. 64 (1964). *Hughes* v. *Superior Court*, 339 U.S. 460 (1950).

2. This injunction cannot be justified on the basis of protecting respondent's privacy. The concept of privacy does not provide a basis for the suppression of literature on subjects of public interest and concern, especially where falsity has not been found. *Time, Inc.* v. *Hill,* 385 U.S. 374 (1967).

Respondent's purported privacy interest is far less substantial than those asserted in the past in attempts to justify unconstitutional restraints on literature distribution. *Martin* v. *Struthers,* 319 U.S. 141 (1943). Illinois appears to be alone in defining petitioners' presence in Westchester passing out leaflets critical of respondent as an invasion of his privacy. Respondent's interest in denying petitioners access to Westchester is not one which has heretofore been protected under what is termed "the law of privacy." Prosser, *Handbook of the Law of Torts,* §112 (3rd ed., 1964). The courts of Illinois may not, under the guise of privacy, insulate respondent from exposure and criticism in Westchester of his real estate practices in Austin, and grant him the power to censor the dissemination of literature to other residents of his municipality.

II. The injunction is overbroad. In addition to a blanket prohibition on literature distribution, the injunction also contains a prohibition on picketing anywhere in Westchester, absent any allegation or evidence that petitioners had engaged in picketing in Westchester. This injunction against picketing is unrelated to the reasons for which picketing can be restricted or enjoined, and is thus overbroad. *International Brotherhood* v. *Vogt,* 354 U.S. 284 (1957); *Thornhill* v. *Alabama,* 310 U.S. 88 (1940).

ARGUMENT

I. THIS INJUNCTION WHICH BARS PETITIONERS FROM DISTRIBUTING ANY LITERATURE IN THE VILLAGE OF WESTCHESTER IS AN UNCONSTITUTIONAL RESTRAINT ON FIRST AMENDMENT RIGHTS OF FREEDOM OF SPEECH AND THE PRESS

> "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell* v. *Griffin*, 303 U.S. 444, 452 (1938). See also *Murdock* v. *Pennsylvania*, 319 U.S. 105, 108, 111 (1943).

The facts in this case "reflect an exercise of these basic constitutional rights in their most pristine and classic form." *Edwards* v. *South Carolina*, 372 U.S. 229, 235 (1963). Petitioners' distribution of leaflets in Westchester "was on all occasions conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic, and did not precipitate any fights, disturbances or other breaches of the peace" (Finding of the trial court, A. 69). Nevertheless, the courts of Illinois have issued and sustained an injunction prohibiting petitioners from distributing any literature in Westchester on the grounds that petitioners did not have a proper purpose for distribution of literature and that distribution of literature in Westchester concerning respondent's real estate practices in Chicago invaded his privacy. This

restraint has been in effect for over two and one-half years.

A. Petitioners' Literature and its Distribution in Westchester is Constitutionally Protected.

The manner and place of petitioners' distribution of literature have been repeatedly held to be free from restraint. Westchester could not have passed an ordinance which made Westchester off limits for distribution of literature as the Court has done here by injunction. *Lovell* v. *Griffin*, 303 U.S. 444 (1938); *Jamison* v. *Texas*, 318 U.S. 413 (1943). Door to door distribution of non-commercial literature cannot be prohibited on the grounds that such distribution may disturb some residents, *Martin* v. *Struthers*, 319 U.S. 141 (1943), or may be part of a fraudulent solicitation. *Schneider* v. *State*, 308 U.S. 147, 164 (1939). Distribution in public places cannot be prohibited on the ground that recipients of literature may litter. *Schneider* v. *State*, 308 U.S. at 162-163. Indeed, protection of leaflets has been considered so important as to prohibit a tax on their distribution, *Murdock* v. *Pennsylvania*, 319 U.S. 105, 113-117 (1943), and a requirement that leaflets "have printed on them the names and addresses of the persons who prepared, distributed or sponsored them." *Talley* v. *California*, 362 U.S. 60, 63-64 (1960).

The basis of the constitutional protection afforded the distribution of literature has been stated as follows: "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." *Lovell* v. *Griffin*, 303 U.S. at 452, quoting from *Ex Parte Jackson*, 96 U.S. 727 at 733. In a democracy, leaflets have an especially

important role to play. "Door to door distribution of circulars is essential to the poorly financed causes of little people." *Martin* v. *Struthers*, 319 U.S. at 146. Leaflets have proved to be "most effective instruments in the dissemination of opinion." *Schneider* v. *State*, 308 U.S. at 164. If the Illinois courts are now permitted to carve the distribution of leaflets out of the First Amendment,[2] persons and groups such as petitioners will be denied the same right to express their views as those who have greater access to more expensive media. *Cf. Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 389-390, 400 (1969); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 266 (1964); Barron, *Access to the Press—A New First Amendment Right*, 80 Harv. L. Rev. 1641 (1967).

B. The Injunction Issued in This Case Is an Invalid Prior Restraint.

Not only have the Illinois courts disregarded these First Amendment principles with respect to the distribution of literature, but they have chosen to prohibit petitioners' distribution of literature by injunction, a form of prior restraint that has long been forbidden. *Near* v. *Minnesota*, 283 U.S. 697 (1931); *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130, 149 (1967) (opinion of Mr. Justice Harlan).[3] The Court in *Near* overturned as a prior re-

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[2] The Appellate Court of Illinois stated in its opinion that petitioners' "right of 'free speech' is not involved here" (A. 86).

[3] While the prohibition on prior restraints may not be absolute, deviation from the no-prior restraint doctrine has been "only in exceptional cases"; this is clearly not one of those exceptional cases. *Times Film Corp.* v. *Chicago*, 365 U.S. 43, 47 (1961); *Near* v. *Minnesota*, 283 U.S. at 715-716.

straint an injunction issued by a Minnesota court against the continued publication and circulation of a newspaper found to be "chiefly devoted to malicious, scandalous and defamatory articles." *Near* v. *Minnesota,* 283 U.S. at 706, 712, 720-722.

Prior restraints on the distribution of non-commercial leaflets are equally proscribed. *Lovell* v. *Griffin,* 303 U.S. at 452. In *Lovell,* the Court held an ordinance prohibiting the distribution of literature within city limits without a permit from the city manager to be an unconstitutional prior restraint. *Lovell* v. *Griffin,* 303 U.S. at 451-452; accord, *Schneider* v. *State,* 308 U.S. 147, 161-162, 164-165 (1939).

This Court upon review of the history of the struggle against licensing which produced the conception of liberty embodied in the First Amendment, noted that a "leading purpose" of the First Amendment was the elimination of prior restraints. *Lovell* v. *Griffin,* 303 U.S. at 451-452; see also *Carroll* v. *Princess Anne,* 393 U.S. 175, 181 (1968); *Near* v. *Minnesota,* 283 U.S. at 713-718; Emerson, *The Doctrine of Prior Restraint,* 25 Law and Contemporary Problems 648 (1955). The reasons for the proscription against prior restraints are that "[o]rdinarily, the State's constitutionally permissible interests are adequately served by criminal penalties imposed after freedom to speak has been so grossly abused that its immunity is breached. The impact and consequences of subsequent punishment for such abuse are materially different from those of prior restraint." *Carroll* v. *Princess Anne,* 393 U.S. at 180-181; *cf. New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964); *Time, Inc.* v. *Hill,* 385 U.S. 374 (1967).

This difference is dramatically illustrated in the use of of the injunction as a prior restraint. In *Walker* v. *City of*

Birmingham, 388 U.S. 307 (1967), this Court held that a state can refuse to permit challenge to the constitutionality of an injunction restraining speech activities in contempt proceedings brought for violation of the injunction.[4] This means that should this Court declare the injunction here unconstitutional, petitioners will still have been barred from the exercise of their First Amendment rights for over two and one-half years. *Cf. Shuttlesworth* v. *City of Birmingham*, 394 U.S. 147, 151, 157-158 (1969). This is the evil which the proscription of prior restraints was designed to prevent. *Near* v. *Minnesota*, 283 U.S. 697, 713-718; *Carroll* v. *Princess Anne*, 393 U.S. at 181, 184. If respondent, based on the purported invasion of privacy in this case, had obtained a judgment for damages against petitioners, the restraint on petitioners' rights of speech and the press would be far less complete. The potential inhibiting effort of subsequent punishment cannot be doubted.[5] However, if such a damages award is found by a higher court to be unconstitutional, petitioners would still have been able to exercise their First Amendment rights while vindicating them. They could have chosen to risk subsequent damage actions knowing that they could present their constitutional defenses in these actions; if they had violated the injunction issued in this case, they would have no such opportunity.

If the comparatively minimal restraints of taxation in *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943), and dis-

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[4] Illinois prohibits such challenges as did Alabama in *Walker*. *Faris* v. *Faris*, 35 Ill. 2d 305, 309, 220 N.E. 2d 210, 212-213 (1966); *Cummings-Landau Co.* v. *Koplin*, 386 Ill. 368, 383-384, 54 N.E. 2d 462, 469 (1944); *City of Chicago* v. *King*, 86 Ill. App. 2d 340, 354-355, 230 N.E. 2d 41, 48 (1st Dist. 1967).

[5] See *Time, Inc.* v. *Hill*, 385 U.S. 374 (1967); *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964).

closure in *Talley* v. *California*, 362 U.S. 60 (1960), are unconstitutional restraints on the distribution of leaflets, it is inconceivable that this gross prohibition on petitioners' leaflets can survive constitutional scrutiny.

C. The Justifications Used by the Illinois Courts to Sustain This Injunction Cannot Withstand Constitutional Scrutiny.

The Illinois Appellate Court in finding that petitioners' "right of 'free speech' is not involved here" (A. 86) and in disregarding the no prior restraint doctrine justified its action on the basis of two factors: purpose and privacy; these two factors cannot be used to restrain distribution of literature. State created labels such as invalid purpose or privacy "can claim no talismanic immunity from constitutional limitations. [They] must be measured by standards that satisfy the First Amendment." *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 269 (1964).

1. The Relevance of the Disseminators' Purpose.

The Appellate Court of Illinois believed that petitioners did not have a proper purpose for the distribution of literature in Westchester because "the sole purpose was to force plaintiff to sign a "no-solicitation agreement." From this it concluded that petitioners' purpose "was not to inform the public of a matter of public interest" (A. 85). But contrary to this characterization it is clear that petitioners hoped that by informing the residents of Westchester of a matter of public interest respondent would agree to stop soliciting sales in petitioners' racially changing neighborhood. Petitioner William Holmes testified:

> "A. . . . my primary motive was to ask Mr. Keefe to make a public act of faith in the community where he is making his living, and because he failed to do

this — in fact he said that we don't want a thing to do with you, and we don't care about your community — so we went out and decided to let his, let his neighbors know what he was doing to us.

"Q. And, by doing this, you had hoped that he would finally sign this agreement that you submitted, is that right?

"A. Yes, Sir" (A. 58-59, 72).

Here, as in most speech, the speaker's goal is more than public information. It is directed toward influencing events. But this Court has not limited the protections of the First Amendment to those whose only interest is public information. *Terminiello* v. *City of Chicago*, 337 U.S. 1, 4 (1949); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 269-273 (1954); *Time, Inc.* v. *Hill*, 385 U.S. 374, 388-389, 394-397 (1967); *Brandenburg* v. *Ohio*, 395 U.S. 444, 447-448 (1969). Speech may inform; it may embarrass, expose and persuade. Nevertheless it is protected against restraint. As the Court said in *Thomas* v. *Collins*, 323 U.S. 516, 537 (1945):

> "[T]he protection they [the Framers] sought was not solely for persons in intellectual pursuits. It extends to more than abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts."

If a disseminator's purpose determines the scope of the First Amendment's protection, little speech would remain immune from restraint. It is "the essence of censorship" to have to satisfy a judge that speech is "published with good motives and for justifiable ends." *Near* v. *Minnesota*, 283 U.S. 697, 713 (1931). See also *Garrison* v. *Louisiana*, 379 U.S. 64, 73 (1964). In *Near*, the Court was faced with

a statute permitting prior restraint by injunction if the publisher could not show truth, good motives and justifiable ends. *Near* v. *Minnesota*, 283 U.S. at 721. The Court there recognized that to require a showing that a publisher's ends are justifiable gives the legislature discretion to choose which ends it approves and to establish machinery to make this determination, be it by court or administrative agency. "And [this] would be but a step to a complete system of censorship." *Id.* at 721.

In *Garrison* v. *Louisiana*, 379 U.S. 64 (1964), this Court again discussed the excessive restraint which subjective tests such as motive or purpose impose on speech. There the state court of Louisiana affirmed a conviction for criminal libel on the basis that the evidence showed defendant made statements with "ill will, enmity, or a wanton desire to injure." *Id.* at 78. This Court considered "whether the historical limitation of the defense of truth in criminal libel to utterances published with 'good motives and for justifiable ends' should be incorporated into the New York Times rule . . .", *Id.* at 70-71, and held that such a test did not meet the constitutional standards established in *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964). See also *Beckley Newspapers* v. *Hanks*, 389 U.S. 81 (1967).

> "Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth." *Garrison* v. *Louisiana*, 379 U.S. at 73.

The Appellate Court of Illinois, however, thought that distribution of literature could be enjoined because of a purpose with which it disagreed, on the basis of a false analogy to picketing. But picketing, which is more than

speech, does not enjoy the same protection as the distribution of literature. *Hughes* v. *Superior Court*, 339 U.S. 460, 464-466 (1950).

> "But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' [citation omitted] Publication in a newspaper, or by distribution of circulars, may convey the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word." *Id.* at 464-465.

Therefore, regardless of the merits of the "unlawful purpose" doctrine with respect to picketing, it has no application here. Moreover, even the power of states to justify restrictions on picketing by declaring purposes unlawful is limited by the First Amendment. In *Food Employees* v. *Logan Plaza*, 391 U.S. 308 (1968), this Court stated that is is constitutionally impermissible to prohibit picketing of a business "on the *sole* ground that it is conducted by persons not employees whose purpose is to discourage patronage of the business." *Id.* at 315.

Indeed, neither the Illinois trial court nor Appellate Court found that petitioners' purpose was sufficiently against public policy so as to justify a prohibition against picketing in all places.[6] Thus the courts of Illinois have

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[6] Respondent sought to restrain picketing by petitioners near his place of business in Austin, but the trial court did not enjoin such picketing, and the Appellate Court of Illinois indicated its approval (A. 70, 80).

determined that a purpose with which they disagree can be used to restrain the distribution of literature even when that same purpose would not justify a total prohibition on picketing. This turns the First Amendment on its head.

2. The Prohibited Zone of Privacy Theory of the Illinois Courts.

In support of its conclusion that petitioners' "right of 'free speech' is not involved here" the Illinois Appellate Court claimed that the distribution of literature by petitioners in Westchester invaded respondent's right of privacy (A. 85-86). However, the First Amendment does not permit a court, at the behest of a suburban resident, to insulate that suburb from the distribution of leaflets concerning his involvement in another part of the metropolitan area in a matter of major public concern.

This Court decided in *Time, Inc.* v. *Hill,* 385 U.S. 374 (1967), that First Amendment rights took precedence over the alleged privacy interest asserted there. In that case it was held that defendant's publication on a matter of public interest even if false was constitutionally protected and that for plaintiff's privacy action to succeed he would have to prove that the statements were made with knowledge of their falsity or in reckless disregard of the truth. *Time, Inc.* v. *Hill,* 385 U.S. at 387-388. In the case at bar there was neither an allegation in the complaint nor a finding by the trial court that the statements about respondent were made with knowledge of their falsity or in reckless disregard of the truth. Indeed, there was no finding that petitioners' statements were untrue!

The problems created by real estate practices in racially changing neighborhoods are matters of public interest. See Prosser, *Handbook of the Law of Torts,* §112 at

844-850 (3rd ed. 1964). For example, these problems have been publicized in newspapers and magazine articles[7] and discussed in an opinion of the Illinois Supreme Court.[8] Clearly, discussion of subjects such as that involved here, which in addition to being of interest are of social concern, is more needed "to enable the members of society to cope with the exigencies of their period" than the subject involved in *Time, Inc.* v. *Hill.*[9] *Time, Inc.* v. *Hill*, 385 U.S. at 388, quoting from *Thornhill* v. *Alabama*, 310 U.S. 88, 102 (1940); *cf. Time, Inc.* v. *Hill*, 385 U.S. at 415 (Dissenting opinion of Mr. Justice Fortas).

Businessmen cannot expect to be free from public scrutiny when their business practices touch on such matters of public concern. Austin, in 1967, was a racially changing neighborhood at the western edge of the Chicago west side black ghetto. Certainly respondent who chose to actively solicit for sale the homes of residents immediately west of the present segregated area, knew or should have known, that such practices of real estate brokers in changing areas are a matter of serious and

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[7] *Confessions of a Blockbuster*, Saturday Evening Post, July 14, 1962, at 15-19; *How We Beat the Blockbusters*, Saturday Evening Post, March 23, 1968, at 50-55; *Attack Against Blockbusting: Chicago Court Action*, U.S. News and World Report, April 7, 1969, at 8; *Spotlight on Blockbusting: Unscrupulous Realtors and Unthinking Community; a Baltimore Study*, 120 America at 563-564 (May 10, 1969); *Unbusted Blocks*, Newsweek, December 1, 1969, at 55; Chicago Daily News, August 11, 1970, at 3, col. 1.

[8] *Chicago Real Estate Bd.* v. *City of Chicago*, 36 Ill. 2d 530, 533-534, 553, 224 N.E. 2d 793, 797, 807 (1967).

[9] In *Time*, a magazine was alleged to have falsely reported that a new play portrayed an experience suffered by plaintiff and his family when held hostage by escaped convicts in plaintiff's home. *Id.* at 377-378.

continuing public interest. His participation in such practices involved the risk of exposure which "is an essential incident of life in a society which places a primary value on freedom of speech and of press." *Time, Inc.* v. *Hill*, 385 U.S. at 388.

Yet, the Appellate Court of Illinois implies that because "[T]here was no evidence to show that plaintiff was engaged in 'panic peddling' in Westchester or that he intended to do business in Westchester," the subject of his real estate activities in Austin was improper for Westchester and that the distribution of literature on this subject in Westchester constituted an invasion of respondent's privacy. The thrust of this privacy justification for the injunction is that the very presence of petitioners distributing literature critical of respondent in his city of residence invaded his privacy.

Illinois appears to be alone in defining the presence of persons passing out leaflets "to residents of some homes in the neighborhood of plaintiff's [respondent's] place of residence, to some people at a shopping center in Westchester, and to some parishioners on their way to or from Mass at Divine Infant Church in Westchester," (A. 69) as an invasion of respondent's privacy. Such presence does not come within the "four distinct kinds of invasion of four different interests of the plaintiff" which have been subsumed under the law of privacy: (1) appropriation of another's name; (2) unreasonable intrusion upon the seclusion of another; (3) unreasonable publicity which places another in a false light before the public; and (4) unreasonable publicity given to another's private life. Prosser, *Handbook of the Law of Torts*, §112 at 832-844 (3d ed., 1964); Restatement (Second) of Torts, §§652A, 652B, 652C, 652D (Tent. Draft No.

13, 1967). This is clearly not a case of appropriation. The intrusion cases are not in point since the contacts respondent complains of were with third persons and not with respondent and did not concern his private affairs. Prosser, *supra*, §112 at 833-834; see also *Nader* v. *General Motors*, 25 N.Y. 2d 560, 567-569, 255 N.E. 2d 765, 769-770 (1970). This cannot be a false light case since there has been no finding of falsity. *Time, Inc.* v. *Hill*, 385 U.S. 374, 383-388 (1967); Prosser, *supra*, §112 at 843. Finally, the subject matter of petitioners' leaflets clearly prevents this from being a case of unreasonable publicity given to another's private life. Prosser, *supra*, §112 at 844-850.

The purported privacy interest asserted by respondent, based on the presence of persons distributing critical leaflets in his town, is far less substantial than that asserted by communities who have attempted to justify restraints on literature distribution in earlier cases. In *Martin* v. *Struthers*, 319 U.S. 141 (1943), the city sought to justify an ordinance which prohibited persons who distributed leaflets from summoning residents to the door to receive those leaflets on the ground that ringing doorbells in that industrial town disturbed the many residents who worked the swing shift and slept during the day. However, the Court in *Martin* held that the "[f]reedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society" that the community could not substitute its judgment for the judgment of the individual householder as to what literature the resident should receive; the First Amendment guarantees both the right to distribute literature and "the right to receive it." *Martin* v. *Struthers*, 319 U.S. at 143-144, 146-147. See also *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965); *Rowan* v. *United*

States Post Office, 397 U.S. 728, 736-738 (1970). And the offensiveness of the views of persons who distribute literature or speak to some or even most of the residents of a community provides no justification for a prohibition on peaceful dissemination of such views. *Cantwell* v. *Connecticut*, 310 U.S. 296, 301-303, 308-311 (1940); *cf. Pickering* v. *Board of Education*, 391 U.S. 563, 569-572 (1968). Even locations, such as public schools, which unlike the public ways and doorsteps of Westchester, have not traditionally been considered open to First Amendment activities, may not be made enclaves in which such activities can be prohibited. *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503, 511 (1969).

The Illinois courts cannot under the guise of privacy insulate respondent in his city of residence from exposure and criticism by petitioners of his real estate practices in Austin. By making Westchester "off limits" to petitioners' distribution of literature, Illinois has granted respondent censorship power, the power to prevent other residents of Westchester from receiving literature critical of him. This courts cannot do.

II. THE INJUNCTION PROHIBITING LITERATURE DISTRIBUTION AND PICKETING ANYWHERE IN THE VILLAGE OF WESTCHESTER IS UNCONSTITUTIONAL BECAUSE IT IS OVERBROAD

The Illinois courts have issued and sustained this injunction against the distribution of literature and picketing anywhere in the Village of Westchester, absent any allegation or evidence that petitioners had engaged in picketing in Westchester.

While the right to picket may not be absolute, "[s]tate courts, no more than state legislatures, can enact blanket

prohibitions against picketing."[10] *International Brotherhood* v. *Vogt*, 354 U.S. 284, 295 (1957). Accord, *Thornhill* v. *Alabama*, 310 U.S. 88, 104-105 (1940).

Furthermore, a court may not resolve the complex issues, including constitutional ones, which picketing situations raise, in the absence of a specific factual context. *International Brotherhood* v. *Vogt*, 354 U.S. at 294-295; *cf.*, *Carroll* v. *Princess Anne*, 393 U.S. 175, 183-184 (1968). A valid governmental purpose "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960).

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[10] The cases cited by petitioners, *supra*, with respect to the invalidity of restraints on the distribution of literature also establish the invalidity of blanket prohibitions on literature distribution, and of course it certainly follows that if picketing may not be subject to blanket prohibitions, the distribution of leaflets may not be subject to such restraint. See *Kirkland* v. *Wallace*, 403 F.2d 413, 416 (5th Cir. 1968).

CONCLUSION

For all the reasons stated above, the injunction should be declared unconstitutional and dissolved.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 135

ORGANIZATION FOR A BETTER AUSTIN, et al.,

Petitioners,

vs.

JEROME M. KEEFE,

Respondent.

On Writ of Certiorari to the Appellate Court of Illinois, First District.

BRIEF FOR RESPONDENT

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution
Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall

issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Illinois Constitution
Article II, § 19

Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay.

Illinois Revised Statutes 1969
Ch. 38, § 21.1

Article 21.1 Residential Picketing

Sec.
21.1-1 Legislative finding and declaration.
21.1-2 Prohibition—exceptions.
21.1-3 Penalty.

Article 21.1 was added by act approved June 29, 1967. L. 1967, p. 940.

21.1-1. § 21.1-1. *Legislative finding and declaration.* The Legislature finds and declares that men in a free society have the right to quiet enjoyment of their homes; that the stability of community and family life cannot be maintained unless the right to privacy and a sense of security and peace in the home are respected and encouraged; that residential picketing, however just the cause inspiring it, disrupts home, family and communal life; that residential picketing is inappropriate in our society, where the jealously guarded rights of free speech

and assembly have always been associated with respect for the rights of others. For these reasons the Legislature finds and declares this Article to be necessary. Added by act approved June 29, 1967. L. 1967, p. 940.

21.1-2 *Prohibition—Exceptions.*] § 21.1-2. It is unlawful to picket before or about the residence or dwelling of any person, except when the residence or dwelling is used as a place of business. However, this Article does not apply to a person peacefully picketing his own residence or dwelling and does not prohibit the peaceful picketing of a place of employment involved in a labor dispute or the place of holding a meeting or assembly on premises commonly used to discuss subjects of general public interest. Added by act approved June 29, 1967. L. 1967, p. 940.

21.1-3. *Penalty.*] § 21.1-3. Any person who violates Section 21.1-2 shall be fined not more than $500 or imprisoned not more than 6 months, or both. Added by act approved June 29, 1967. L. 1967, p. 940.

QUESTIONS PRESENTED

1. Whether the interest of the State of Illinois in promoting the peace and stability of home, family and community permits regulation of conduct intended to force agreement by intrusion into residential privacy.

2. Does the First Amendment give a hostile community organization the unqualified right to continued physical presence in a residential neighborhood for the sole purpose of compelling an agreement over business practices in a distant community by distribution of handbills threatening continued residential intrusion until the agreement is secured?

3. Whether the State of Illinois may reasonably limit conduct intended to coerce abandonment of lawful business practices.

Statement of The Case

Respondent Jerome M. Keefe ("Keefe") is a licensed Illinois real estate broker engaged in the real estate business on the west side of Chicago in the so-called Austin community. (A. 17) He resides with his family in the suburb of Westchester approximately 7 miles from his place of business. The Austin community in 1967 was in the process of racial transition. Petitioner Organization for a Better Austin ("OBA") is a neighborhood organization which, among its other activities, was trying to slow the exodus of white families from Austin. (A. 33-34)

Keefe, one of approximately 100 real estate brokers in Austin, solicited for business on occasion by having young boys distribute his business card from door to door. (A. 24) The card simply stated: "We invite your listings. We have prospective buyers for income property and residential property in the Austin area." and identified his business name, place of business and business telephone. (A. 37, 10)

The OBA objected to any form of solicitation of real estate listings and had induced three of the one hundred brokers in Austin to sign agreements saying that they would not solicit. (A. 41) Prior to 1969, solicitation by a real estate broker in Illinois was not illegal, unless done on the basis of prospective loss of value due to racial change.*

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* Chicago Fair Housing Ordinance, ch. 198.7-B, Municipal Code of Chicago; Ill. Rev. Stat. 1969, ch. 38, § 70-51. In 1969, Illinois adopted legislation permitting the owners of residential property to prohibit all broker solicitation by registration with the Illinois Human Relations Commission and notice to brokers. Ill. Rev. Stat. 1969, ch. 127, § 214.4-1; Ill. Rev. Stat. 1969, ch. 38, § 70-51(d).

Keefe offered to sign an agreement that he would not solicit on the grounds of loss of value due to racial change, that he would abide by the fair housing law, that he would show all listings to both white and Negro buyers and that he would make all his listings available to the OBA. (A. 61-62) The OBA refused to accept this agreement unless Keefe signed the additional pledge: "Neither I, Jerome Keefe, nor any of my salesmen, will solicit property, by phone, flyer, or visit, in the community of Austin." (A. 61) If Keefe signed this agreement four of the 100 real estate brokers in Austin could not solicit listings.

Defendants' Tactics

In order to coerce Keefe into capitulating to their demands, the OBA initiated a program of picketing, leaflet distribution and other tactics calculated to apply pressure on Keefe, both at his home and place of business. The purpose of these activities was admittedly to make Keefe sign the non-solicitation agreement. (A. 65) Leaflets highly critical of Keefe were prepared and taken by OBA members to his residence where Mrs. Keefe was informed that they would be distributed to her neighbors unless Keefe agreed to meet with them. (A. 50) A meeting took place at which Keefe was asked to sign the nonsolicitation agreement. (A. 51) Upon his refusal, a number of OBA members proceeded to Westchester and began distributing the leaflets door to door to Keefe's neighbors. (A. 53) Leaflets were also distributed at his shopping center and to his fellow parishioners at church. (A. 6, 54-55) While the leaflets varied, the theme was the same. (A. 11):

RESIDENTS OF WESTCHESTER BEWARE—

Jerome Keefe
1951 Manchester
Westchester, Illinois
FI 5-3784
Is the real estate broker who
operates out of Jerry's Real
Estate 214 S. Laramie,
Chicago 378-8993.
He has been accused of PANIC PEDDLING.

THE REASON WE ARE IN WESTCHESTER TODAY IS THAT—

He has refused to sign an agreement
with us stating that he will not
solicit in our community.
While on a solicitation call in our
community he stated: "I only sell
to Negroes."
When asked if he had ever done busi-
ness in anything but a racially
changing neighborhood he said "NO"

WE THE NEGRO AND WHITE RESIDENTS OF AUSTIN DEMAND THAT THIS TYPE OF ACTIVITY STOP.

If you want us to stop coming to
Westchester call Jerry Keefe at
FI 5-3784 or 378-8993
and tell him to sign the agreement
with the Austin community.

WHEN HE SIGNS WE STAY IN AUSTIN.

A telegram highly critical of Keefe was sent by the OBA and was published by Keefe's local community newspaper, the Westchester News. (A. 26) These activities continued for over a month. (A. 6) Approximately 30 pickets also began patrolling Keefe's place of business. (A. 43)

While the dispute with the OBA was occurring, Keefe's place of business was burned down. (A. 44) The OBA denied any connection with this occurrence.

Nature of The Proceedings Below

Keefe filed suit to enjoin the OBA from picketing his place of business and his home and from distributing derogatory pamphlets there. (A. 4) There has never been a hearing on the merits of this case. This matter came on for hearing on the request of Keefe for a temporary restraining order of ten days' duration. (A. 16, 68) The purpose of a temporary injunction is to preserve the status quo in the last actual peaceable uncontested status which preceded the suit. It is provisional in nature and does not conclude any rights. *Consumers Digest, Inc.* v. *Consumer Magazine,* 92 Ill. App. 2d 54, 235 N.E. 2d 421, 425 (First District, 1968). The parties recognized that there was additional evidence which would be submitted upon a final hearing on the merits which would refine the factual issues. (A. 66) That evidence is not part of this record.

The Decree Below

The trial court stated that it had no power to enjoin peaceful picketing at Keefe's place of business and that if any libelous placards or pamphlets were distributed there, Keefe's remedy was an action at law for defamation. (A. 67) However, the court did hold that the OBA's activities in Westchester violated Keefe's right of privacy and granted a preliminary injunction.

The order temporarily restrained the OBA from passing out pamphlets, leaflets or literature of any kind, and from picketing, anywhere in the City of Westchester, Illinois. (A. 70) The order expressly denied Keefe's request for an injunction against picketing Keefe's place of

business and passing out pamphlets critical of his method of doing business. (A. 70)

Illinois permits appeals of interlocutory injunction orders to the Appellate Court. Ill Rev. Stat. 1969, ch. 110A, § 307. Keefe did not cross-appeal the denial of a temporary restraining order enjoining OBA activities around his place of business.

The Appellate Court here affirmed the decree of the trial court in an opinion reported in 115 Ill. App. 2d 236, 253 N.E. 2d 276 (1969).

Summary of Argument

I.

Protection of the home and its environs is the essence of the "right of privacy." Where there is conflict between individual privacy, and the right of others to communicate, it is proper to balance the conflicting interests. *Rowan* v. *United States Post Office*, 397 U.S. 728 (1970).

The public policy of the State of Illinois strongly favors the protection of privacy and peace in the home. Residential picketing has been made illegal. Ill. Rev. Stat. 1969, ch. 38, § 21.1-2.

The activities of the OBA in Westchester were admittedly for the sole purpose of coercing Keefe into signing the non-solicitation agreement. The essence of these activities was the presence of members of the OBA on Keefe's block, at his church, and in his shopping center distributing handbills with the threat of returning to the community until Keefe signed the agreement. The State's interest in preserving the peace and privacy of home, family and communal life is sufficient to bar such tactics designed solely to compel agreement by intrusion on residential privacy.

II.

Handbilling, unlike newspapers and periodicals, is not beyond the control of the state if conducted in a manner and for a purpose similar to picketing. *Hughes* v. *Superior Court*, 339 U.S. 460 (1950). The conduct of the OBA in Westchester was calculated to alarm and discomfort Keefe's neighbors by the recurring physical presence of OBA members in the community. The order below does not prevent the OBA from communicating adversely about Keefe in Westchester or anywhere else; it does prohibit their physical presence in the community of Westchester.

(A)

The purpose of the OBA activities in Westchester was properly examined by the trial court in determining whether to issue an injunction. *Hughes* v. *Superior Court*, 339 U.S. 460 (1950); *Giboney* v. *Empire Storage Co.*, 336 U.S. 490 (1949). Where the OBA's purpose was admittedly to coerce rather than communicate, the court properly held that such purpose did not outweigh Keefe's right of privacy.

(B)

The Jehovah Witness cases where this Court struck down municipal ordinances prohibiting or unreasonably restricting the distribution of handbills are not applicable to this case. In none of the cited cases was handbilling a weapon to coerce particular conduct from a protagonist. The right of the OBA to communicate generally regarding Keefe is not in issue.

III.

The right to engage in a lawful business is fully protected in Illinois. *Klein* v. *Department of Registration*, 105 N.E. 2d 758 (1952). The Illinois Courts have traditionally enjoined unreasonable interference with another's right to engage in his lawful occupation. *Carpenter's Union* v. *Citizens Committee to Enforce the Landis Award*, 164 N.E. 393 (1928); *Austin Congress Corp.* v. *Mannina*, 196 N.E. 2d 33 (1964); *Truax* v. *Corrigan*, 257 U.S. 312 (1921).

IV.

The OBA did not specifically object to the restraint against picketing in Westchester. Under Illinois practice, it was too late to complain of the scope of the temporary injunction on appeal. *Austin Congress Corp.* v. *Mannina*, 196 N.E. 2d 33, 34 (1964).

ARGUMENT

I.

The Trial Court Struck A Proper Balance Between Illinois' Interest In Preserving The Peace And Privacy Of Home And Community And The OBA's Right To Communicate.

The trial court specifically found that the activities of the OBA in Westchester violated Keefe's "right of privacy." (A. 74) The "right of privacy" is a generic term which covers a variety of conduct. Prosser, *Law of Torts*, § 112 (3rd Ed., 1964). It is embodied in the Fourth Amendment, *Mapp* v. *Ohio*, 367 U.S. 643, 656 and has other constitutional penumbras, *Griswold* v. *Connecticut*, 381 U.S. 479, 484 (1964).

The essence of privacy is "the right to be let alone." Cooley, *Torts*, 2d ed., 1888, 29. This court has recognized both the existence of the right of privacy, *Griswold* v. *Connecticut*, 381 U.S. 479, 484-486 (1965), and the necessity of balancing this right when it conflicts with first amendment rights of others, *Rowan* v. *United States Post Office*, 397 U.S. 728 (1970). In the *Rowan* case, certain mail order houses and mailing list brokers challenged the constitutionality of an Act of Congress which permits a householder to have his name removed from mailing lists used to sell matters which the addressee in his sole discretion believes to be erotically arousing or sexually provocative, arguing that the statute violated their constitutional right to communicate. In sustaining the constitutionality of the statute, Mr. Chief Justice Burger stated (p. 736):

> "Without doubt the public postal system is an indispensable adjunct of every civilized society and com-

> munication is imperative to a healthy social order. But the right of every person 'to be let alone' must be placed in the scales with the right of others to communicate."

The home has been recognized as the "essence of privacy," *Bell* v. *Maryland*, 378 U.S. 226, 253 (1964). Indeed, learned commentators have urged that, "Freedom of the home is as important as freedom of speech." *Breard* v. *Alexandria*, 341 U.S. 622, 639, n. 27 (1950). Grave concern has been expressed over the practice of demonstrations around homes, " . . . the sacred retreat to which families repair for their privacy . . . " *Gregory* v. *City of Chicago*, 394 U.S. Ill. 111, 125 (1969).

Residential picketing has been denounced as an intrusion on privacy. Kamin, *Residential Picketing and the First Amendment*, 61 Nw. L. R. 177, 225-31 (1966).

Indeed in 1967 Illinois made it unlawful to picket before or about the residence or dwelling of any person. (Ill. Rev. Stats. 1969, ch. 38, § 21.1-2). The public policy of the State of Illinois was expressed by the Legislature as follows (§ 21.1-1):

> "The Legislature finds and declares that men in a free society have the right to quiet enjoyment of their homes; that the stability of community and family life cannot be maintained unless the right to privacy and a sense of security and peace in the home are respected and encouraged; that residential picketing, however just the cause inspiring it, disrupts home, family and communal life; that residential picketing is inappropriate in our society, where the jealously guarded rights of free speech and assembly have always been associated with respect for the rights of others. For these reasons the Legislature finds and declares this Article to be necessary."

Residential picketing does not have the picket line's traditional significance. It is not done to discourage entry into the premises being picketed. There are no customers

or employees to warn. Rather, it is an attempt to embarrass and harass the householder where he is most vulnerable, among his family and neighbors. The recurring presence of members of a hostile neighborhood organization distributing handbills urging residents to pressure their neighbor is no less offensive to a householder than patrol of his sidewalk by a picket. The State of Illinois, acting through its judicial branch, has extended the protection of home, family and communal life to such intrusive and disruptive conduct.

The OBA had no concern whether Westchester residents knew of Keefe's affairs. If he signed the non-solicitation agreement, no one from the OBA would go to Westchester. (A. 53, 11, 12) The activities of the OBA in Westchester were a calculated attempt to deliberately invade Keefe's privacy until he bent to their will. The "medium was the message."

If the OBA has the unrestricted right to distribute derogatory leaflets in the area of Keefe's home until he agrees to meet their demands, do disappointed litigants also have the right to air their grievances with the judge's neighbors, may the focal zone of college disputes be the administrator's residence rather than the campus and must public servants involuntarily share their burdens and controversies with family and neighbors?

In *Public Utilities Commission* v. *Pollak,* 343 U.S. 451 (1952), Mr. Justice Douglas, in his dissenting opinion stated (p. 467):

> "Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom."

The vice of protest directed against the home has frequently been recognized. In *Pipe Machinery Co.* v. *DeMore*, 76 N.E. 2d 725 (Ohio App. 1947), app. dis., 149 Ohio St. 582, 79 N.E. 2d 910 (1948), striking employees went to the residences of eight working employees of plaintiff carrying placards naming each employee, describing him as a "scab" and bearing legends such as, "How can you stand to live so near him?" and "Know your neighbor." Plaintiff obtained an injunction against picketing in the vicinity of the employees' residences and the defendants claimed that such injunction violated their right to free speech. The court noted that the purpose of the picketing and of the placards was not to give the public information as to the merits of the strike but was to intimidate or persuade them to join the strikers. The court held that an injunction restraining the defendants from picketing and circulating placards at or near the employees' residences did not infringe the rights of free speech stating (76 N.E. 2d at 727):

> "The allowable area of economic conflict should not be extended to an invasion of the privacy of the home. Here dwell husband and wife, parents and children, who should enjoy immunity from the external strife of industrial dispute. . . . The common law has always treated the home of a person with great respect. The home is referred to as a man's 'castle' or his 'sanctuary.' Picketing homes and the use of language referring to the head of the house as a 'scab' would not aid in establishing the proper environment for a home. . . . We are not dealing here with a limitation upon the right of free speech. It is obvious that picketing in this case was not for the purpose of disseminating any information as to the strike. Picketing interfered with the quiet and peaceful environment of the homes and thereby established conditions making more difficult the raising of a family and the maintenance of a home."

In *Hebrew Home and Hospital for the Chronic Sick, Inc. v. Davis*, 235 N.Y.S. 2d 318 (Sup. Ct., 1962), a respected jurist was chairman of the board of directors of a hospital which was involved in a labor dispute. Pickets appeared in front of the judge's residence carrying placards saying, "Judge ..... thou shalt not steal the election of 54 workers." A temporary injunction was issued, the court stating (p. 324):

> "There is not a scintilla of justification shown for this conduct. Truly it is shocking, reprehensible and outrageous, deserving the unhesitating and scathing rebuke of the court. Conducted at a considerable distance from the hospital, in an exclusively residential area, it was apparently aimed to cause unspeakable embarrassment, humiliation and mortification to the named jurist and his family. It represents a form of direct and unmitigated coercion and terrorism that should be roundly denounced and sternly condemned. Not within any conceivable limit of the right to free speech and the right to inform, it represents a mean, foul and sinister blow, one to which decent unionism would not stoop."

Protest carried to the doorstep is effective. Few can withstand the distress to wife and child, the intrusion upon friends and neighbors caused by the unremitting distribution of derogatory handbills urging that neighbor take action against neighbor. The concept of privacy is meaningless if it cannot protect the home from such unreasonably intrusive conduct. The home is clearly entitled to protection as a place of sanctuary, free from outside contention and strife. Without such protection, we will have decisions being made, not on the basis of personal conviction, but solely to reduce the clamor of the opposition.

II.

The Activities Of The OBA In Westchester Were Not Beyond The Control Of The State. Handbilling Is Not Entitled To The Same First Amendment Protection Afforded Newspapers and Periodicals Under All Circumstances.

> "Handing out leaflets to passersby is not 'speech pure.' A physical gesture must be utilized to make the potential recipient accept the leaflet. The gesture might be misunderstood. Or the passerby might be coerced into taking the leaflet because of the bulk of the distributor. The passerby may feel that he will be cursed or insulted if he ignores the tendered leaflet. Or, taking a leaflet may be deemed a prudent way of avoiding an unpleasant conversation or an unwelcome oral solicitation." Kamin, *Residential Picketing and the First Amendment*, 61 Nw. U. L. Rev. 177, 212 (1966).

On a number of occasions, teams of OBA members were physically present in the community of Westchester, distributing handbills. The distributions at church and shopping center were necessarily made by tendering handbills to passersby. (A. 54-55) The record is unclear whether distributions to Keefe's neighbors at their homes were uniformly done by depositing the handbills at the door or involved personal confrontation with the homeowner. (A. 46-47) In any event, the distribution of these handbills apparently was the occasion for many conversations with Village residents. (A. 15)

The OBA claims the same first amendment protection for its activities in Westchester afforded the circulation of newspapers and periodicals. Petitioner's Brief pp. 11-12. In fact, the activities of the OBA in Westchester more nearly resemble picketing and should be measured by the same constitutional test. In *Hughes* v. *Superior Court*, 339 U.S. 460 (1950), this court sustained an injunction against Negroes peacefully picketing to compel a grocery store to

hire Negro clerks in proportion to its Negro trade. Regarding picketing, the court stated (pp. 465-466):

> "It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance."

The court, while recognizing that picketing is a mode of communication, stated that (pp. 464-465):

> " . . . it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' Mr. Justice Douglas, joined by Black and Murphy, JJ., concurring in *Bakery & Pastry Drivers & Helpers Local* v. *Wohl*, 315 U.S. 769, 775, 776. Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word."

The OBA obviously believed that their physical presence was a source of discomfort and alarm to Westchester. Westchester residents were advised that the OBA members would continue coming to their community unless Keefe signed the agreement. "When He Signs We Stay In Austin." (A. 11) and "When He Signs The Agreement We Stop Coming To Westchester." (A. 12) It is not difficult to imagine that Keefe's neighbors were apprehensive over the recurring presence of the members of a militant neighborhood organization hostile to a resident of their

block. The knowledge that Keefe's place of business had been recently burned down by unknown parties might well contribute to this apprehension. (A. 44) Like picketing, therefore, the people of Westchester might well be induced to pressure Keefe into signing the agreement because of the real or threatened presence of OBA members rather than any ideas they were disseminating.

In *Breard* v. *Alexandria,* 341 U.S. 622 (1951), this court sustained a "Green River" ordinance forbidding door to door solicitation, by a distributor of magazines and periodicals, stating (p. 642):

> "Freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses. Rights other than those of the advocates are involved. By adjustment of rights, we can have both full liberty of expression and an orderly life."

The trial court did not enjoin communications by OBA members to residents of the Village of Westchester. They are at liberty to communicate with Keefe's neighbors by letter, newspaper advertisement or any other form of communication which does not involve their bodily entrance into the community. However, the Court did recognize that the purpose of the OBA's presence in Westchester was solely to force Keefe's signing of the non-solicitation agreement by intruding upon his privacy, and held that such purpose was subordinate to protection of home, family and communal life.

A.

The Purpose Of The OBA's Recurring Presence In Westchester Was Relevant In Determining Whether Their Activities Should Be Enjoined.

This court has previously recognized that examination of purpose is constitutionally permissible in considering the propriety of an injunction against activities which

claim First Amendment protection. In *Hughes* v. *Superior Court*, 339 U. S. 460 (1950), this court noted (p. 466):

> "The California Supreme Court suggested a distinction between picketing to promote discrimination, as here, and picketing against discrimination: 'It may be assumed for the purposes of this decision, without deciding, that if such discrimination exists, picketing to protest it would not be for an unlawful objective.' 32 Cal. 2d at 855, 198 P. 2d at 888. We cannot construe the Due Process Clause as precluding California from securing respect for its policy against involuntary employment on racial lines by prohibiting systematic picketing that would subvert such policy. See Giboney v. Empire Storage & Ice Co., supra." • • • Picketing is not beyond the control of a State if . . . the purpose which it seeks to effectuate gives ground for its disallowance."

In *Giboney* v. *Empire Storage Co.*, 336 U. S. 490 (1949), a labor union was enjoined from peaceful picketing to get an ice distributor to agree that it would not sell ice to non-union peddlers. An agreement not to sell ice to non-union peddlers would have been in violation of the Missouri statutes against restraint of trade. The union argued that the injunction was an unconstitutional abridgement of free speech. In rejecting this contention, the court examined the purpose of the union's activities, stating (p. 502):

> "It is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. See e.g., *Fox* v. *Washington*, 236 U. S. 273,

> 277; *Chaplinsky* v. *New Hampshire,* 315 U. S. 568. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society."

Here the OBA's purpose was admittedly to pressure Keefe into signing the non-soliciation agreement. Communication to Keefe's neighbors was incidental to this purpose, subject to abandonment upon Keefe's capitulation. The public policy of the State of Illinois strongly favors protection of the home and its environs from unreasonable intrusion, and the court properly considered the OBA's purpose in granting the temporary injunction.

B.

The OBA's Authorities Regarding The Right To Handbill.

The OBA has reviewed the familiar "Jehovah Witnesses" cases where this Court has struck down various ordinances prohibiting the distribution of handbills and suggested that these cases are controlling here. Brief for Petitioner, pp. 10-12. *Lovell* v. *Griffin,* 303 U.S. 444 (1938), *Schneider* v. *State,* 308 U.S. 147 (1939), *Jamison* v. *Texas,* 318 U.S. 413 (1942), and *Martin* v. *Struthers,* 319 U.S. 141 (1942), all involved ordinances which prohibited or unreasonably interfered with distribution of religious tracts to the public at large. This is not the case here. Do the Jehovah's Witnesses have the right to select a target for conversion and proselytize by continuous neighborhood visits with handbills urging the neighbors to call the recalcitrant convert if they want the Jehovah's Witnesses to stay away? A state should not be powerless to

regulate such intrusion upon residential privacy. Indeed, in *Martin* v. *Struthers, supra,* Mr. Justice Frankfurter, in his dissenting opinion, stated (page 153):

> "Concededly, the Due Process Clause of the Fourteenth Amendment did not abrogate the power of the states to recognize that homes are sanctuaries from intrusions upon privacy and of opportunities for leading lives of health and safety."

The handbillers' right of access to the public at large is not menaced by limiting deliberate and calculated intrusion on the peace and residential privacy of a select target through the use of handbills as a weapon of coercion, not persuasion.

III.

The OBA Was Admittedly Trying To Coerce Keefe Into Agreeing Not To Solicit Business In Austin. A Court Of Equity Is Empowered To Restrain Such Interference With Lawful Business Practice.

Keefe's amended complaint sought injunctive relief against OBA activities both at his home and place of business. (A. 4) In addition to alleging a violation of his right of privacy, Keefe asserted that the OBA's continued attack would ruin and destroy his business and means of livelihood. (A. 3) While the trial judge and Appellate Court relied primarily upon the OBA's violation of Keefe's privacy, the decree below may also be justified on the ground of unlawful interference with lawful business practice.

The right to peacefully engage in a legitimate occupation has long been recognized and protected in Illinois. In *Klein* v. *Department of Registration,* 412 Ill. 75, 105 N.E.2d 758 (1952), the court stated (p. 761):

> "An inherent feature of our form of government is that every citizen has the inalienable right to engage

in any legitimate trade, occupation, business or profession which he sees fit. His labor is his property and is bulwarked by the full and equal protection of the law afforded by the due process clause of the Federal constitution. It is also embraced within the constitutional provision which guarantees to everyone liberty and the pursuit of happiness."

A.

Keefe's Solicitation of Business In Austin Was Lawful.

The leaflets distributed by the OBA in Westchester specifically accused Keefe of "illegal soliciting." (A. 12) His soliciting consisted solely of having his business card distributed door to door bearing the legend, "We invite your listings. We have prospective buyers for income property and residential property in the Austin area." (A. 37) It is clearly a lawful practice for a real estate broker, like any other businessman, to solicit for business as long as there is not solicitation on the basis of prospective loss of value due to racial change. Chicago Fair Housing Ordinance, Ch. 198.7-B, Municipal Code of Chicago; Ill. Rev. Stat. 1969, Ch. 38, § 70-51.

B.

Illinois Public Policy Protects Lawful Business Practices from Unreasonable Interference.

The leading case in Illinois on the right to enjoin conduct, including distribution of leaflets, designed to interfere with another's lawful business is *Carpenters' Union* v. *The Citizens Committee to Enforce the Landis Award*, 333 Ill. 225, 164 N.E. 393 (1928). The Carpenters' Union had not participated with other trades in an arbitration by Judge Landis with the Builders Association over terms of employment, and refused to be bound by his recommendations. The Builders Association formed a corporation to foster support for and enforce the Landis award

against dissenting trades. The court noted that the formation of the corporation was lawful and it was done for a lawful purpose and a commendable motive. But the court further noted that the lawful purpose and a good motive did not justify interference with another's lawful business. The court stated (164 N.E. at p. 398):

> "No person or combination of persons has the right, directly or indirectly, to interfere with or disturb another in his lawful business or occupation or for the sake of compelling him to do some act which in his own judgment he does not approve."

The court reviewed at length the coercive tactics used including pamphlets circulated by the defendants to the effect that there was a "war for decency" and it would be "rough seas ahead" for the contractors, labor unions and others who did not help make the Landis award effective. The court noted (164 N.E. at p. 401):

> "Coercion is as easily accomplished without threats of violence as with them, and fear of loss of or injury to business unless one submits to demands is as effective as fear of violence to his person. No person has a right to break off business relations with him to his injury. If an evil motive does not make a lawful act unlawful, it is equally true that what may be regarded as a good motive will not make an unlawful act lawful."

The case was remanded to the trial court with directions to issue an injunction restraining the defendants from, *inter alia* (pp. 404-405): "attempting to interfere with or disturb or prevent employment of the complainants by newspaper advertisements, telephone messages, letters, circulars, notices, personal conversation, economic pressure or other means . . ."

The *Carpenters' Union* case, *supra,* was cited with approval in *Austin Congress Corp.* v. *Mannina,* 46 Ill. App. 2d 192, 196 N.E.2d 33 (1964), where the courts sustained

an injunction restraining defendants from picketing a nursing home with placards stating that the building code had been violated and safety impaired. The court stated the public policy of Illinois as follows (196 N.E.2d at p. 39):

> "That picketing for the purpose of harassment and to cause economic ruination even under the cloak of publicizing the truth of a purported building code violation is violative of the public policy of the State of Illinois is well settled."

In *Giboney* v. *Empire Storage Co.*, 336 U.S. 490 (1948), this court sustained an injunction against union members peacefully picketing a place of business urging that sales be limited to union members, on the ground that the first amendment does not protect speech or other communications intended to coerce an unlawful business practice.

In *Truax* v. *Corrigan*, 257 U.S. 312 (1921), it was held that Arizona could not constitutionally deny a restaurant owner the remedy of injunction where striking employees were, by "moral coercion," discouraging patrons from entering the premises, thereby causing intentional injury to plaintiff's business.

The cause of the controversy between Keefe and the OBA has now been resolved. In 1969, Illinois adopted legislation whereby homeowners who do not desire to be solicited for the sale of their property may register with the Illinois Human Relations Commission which in turn gives notice of the homeowner's wishes to real estate brokers. Ill. Rev. Stat. 1969, Ch. 127, § 214, .4-1; Ch. 38, § 70-51(d). Solicitation thereafter by a broker is unlawful. If the OBA now deems any form of solicitation to be offensive it may concentrate on the registration of property owners under the act. Under Illinois law no group is entitled to harass and coerce another to abandon lawful business practice, and the trial court properly enjoined such activity here.

IV.

The Scope of the Injunction Order.

The OBA argues that the temporary injunction order is overbroad because there is no evidence that the OBA had engaged in picketing in Westchester. Brief of Petitioner, pp. 23-24. The OBA was actively picketing Keefe's place of business in Chicago and the trial court could reasonably conclude that there was an imminent threat of this conduct in Westchester. Moreover, the record does not disclose any specific objection by the OBA against the restraint against picketing in Westchester. Under well settled Illinois law, the OBA cannot now be heard to complain that the injunction order is too broad where that objection was not presented to the chancellor in the first instance. *Austin Congress Corporation* v. *Mannina,* 46 Ill. App. 2d 192, 196 N.E. 2d 33, 34 (1964).

Conclusion

It is respectfully submitted that the court below should be affirmed and the matter remanded to the Circuit Court of Cook County, Illinois for a full hearing on the merits of this case.

Respectfully submitted,

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No. 135

In the

Supreme Court of the United States

OCTOBER TERM, 1970

ORGANIZATION FOR A BETTER AUSTIN, et al.,
Petitioners,

vs.

JEROME M. KEEFE,
Respondent.

ON WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

STATEMENT

This reply brief is submitted to place in proper perspective respondent's purported justifications of this injunction barring the distribution of literature by petitioners anywhere in Westchester, Illinois, and to correct certain of respondent's erroneous statements of Illinois laws.

ARGUMENT

I. RESPONDENT'S PURPORTED JUSTIFICATIONS PROVIDE NO BASIS FOR THIS INJUNCTION

For nearly three decades the freedom to distribute literature by hand to every citizen has been considered "so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved." *Martin* v. *Struthers,* 319 U.S. 141, 146-147 (1943). It may be constitutionally permissible to prevent persons who distribute literature from blocking traffic on a crowded street, from denying passage to pedestrians who do not accept tendered leaflets and from "throwing literature broadcast in the streets." *Schneider* v. *State,* 308 U.S. 147, 160 (1939). A homeowner may ask a distributor of literature to leave his property. *Martin* v. *Struthers,* 319 U.S. at 147-149. Excessive noise may be regulated. *Kovacs* v. *Cooper,* 336 U.S. 77, 86-87 (1949). However, there is no basis for such regulation in the case at bar (see the findings of the trial court, A.69).

One who is criticized cannot defeat constitutional guarantees by recasting peaceful distribution of literature as an invasion of "privacy." Respondent's rhetoric about the invasion of his "sanctuary" (Respondent's Brief, p. 15; hereinafter "Resp. Br.") bears little relation to the facts of this case. He considers his private sanctuary to include the public streets and sidewalks of Westchester, its shopping centers and the doorsteps of all its residents. This is not the concept of privacy discussed in *Rowan* v. *United States Post Office,* 397 U.S. 728 (1970) (Resp. Br. 11). "Privacy" here is a cloak for censorship.

Nor may the presence of persons who are necessary for leaflet distribution be recast as "coercion."[1] Acceptance of such distorted and baseless characterizations would swallow up protected First Amendment activities. Moreover, the record and the trial court's findings contain nothing to support the proposition that neighbors or residents felt coerced by the distribution of the handbills. The distribution was peaceful and orderly, and did not precipitate any fights, disturbances or other breaches of the peace (A. 69). Respondent can only assert that "the distribution of these handbills apparently was the occasion for many conversations." (Resp. Br. 16).

The Constitution has never permitted the criticized to silence his critics. It has never permitted suburbs to become enclaves into which First Amendment activities may not intrude. This injunction, which sanctions such restrictions, "can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas." *Martin* v. *Struthers,* 319 U.S. at 147.

II. PETITIONERS REMAIN SUBJECT TO THIS INJUNCTION

Respondent now, for the first time in the three years of proceedings in this case, suggests the injunction order against petitioners expired ten days after entry (Resp. Br. 7). Unfortunately, respondent's belated suggestion is contrary to both the facts and Illinois law, and petitioners continue to be subject to its restraint. A temporary or

[1] Similarly, respondent attempts to equate the distribution of literature with picketing (Resp. Br. 16-17). Respondent's sole authority for this proposition, *Hughes* v. *Superior Court,* 339 U.S. 460, 464-466 (1950), is to the contrary.

preliminary injunction in Illinois is binding until "dissolution or until the order granting it is reversed."[2] *Kessie v. Talcott*, 305 Ill. App. 627, 634, 27 N.E. 2d 857, 860 (2d Dist. 1940). The only exception of which petitioners are aware is in the case of a temporary restraining order issued without notice, which by statute expires after 10 days. Ill. Rev. Stat., Ch. 69, § 3-1 (1967). Indeed, the written injunction order here, which was entered after notice and a hearing, was not entered until 47 days after the conclusion of the hearing (A.16, 68). It continues in full force today.

III. THE OVERBREADTH OF THIS INJUNCTION IS PROPERLY BEFORE THE COURT

Respondent claims that petitioners cannot challenge the overbreadth of this injunction, at least with respect to the blanket prohibition on picketing, because petitioners purportedly did not present to the trial court a specific objection to the restraint against picketing (Resp. Br. 25). However, the record in this case shows that respondent argued waiver under Illinois law to the Appellate Court of Illinois (Brief of Plaintiff-Appellee, p. 19); but that court decided the overbreadth issue on the merits and held that the restraint on petitioners' activities was not overly broad (A.84-86). The constitutionality of this holding is clearly before the Court.

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[2] Illinois courts use the terms temporary, preliminary and interlocutory interchangeably in their reference to injunctions. Nichols Illinois Civil Practice, Vol. 3, § 2267.

CONCLUSION

For all the reasons stated above and in petitioners' initial brief, the injunction should be declared unconstitutional and dissolved.

Respectfully submitted,

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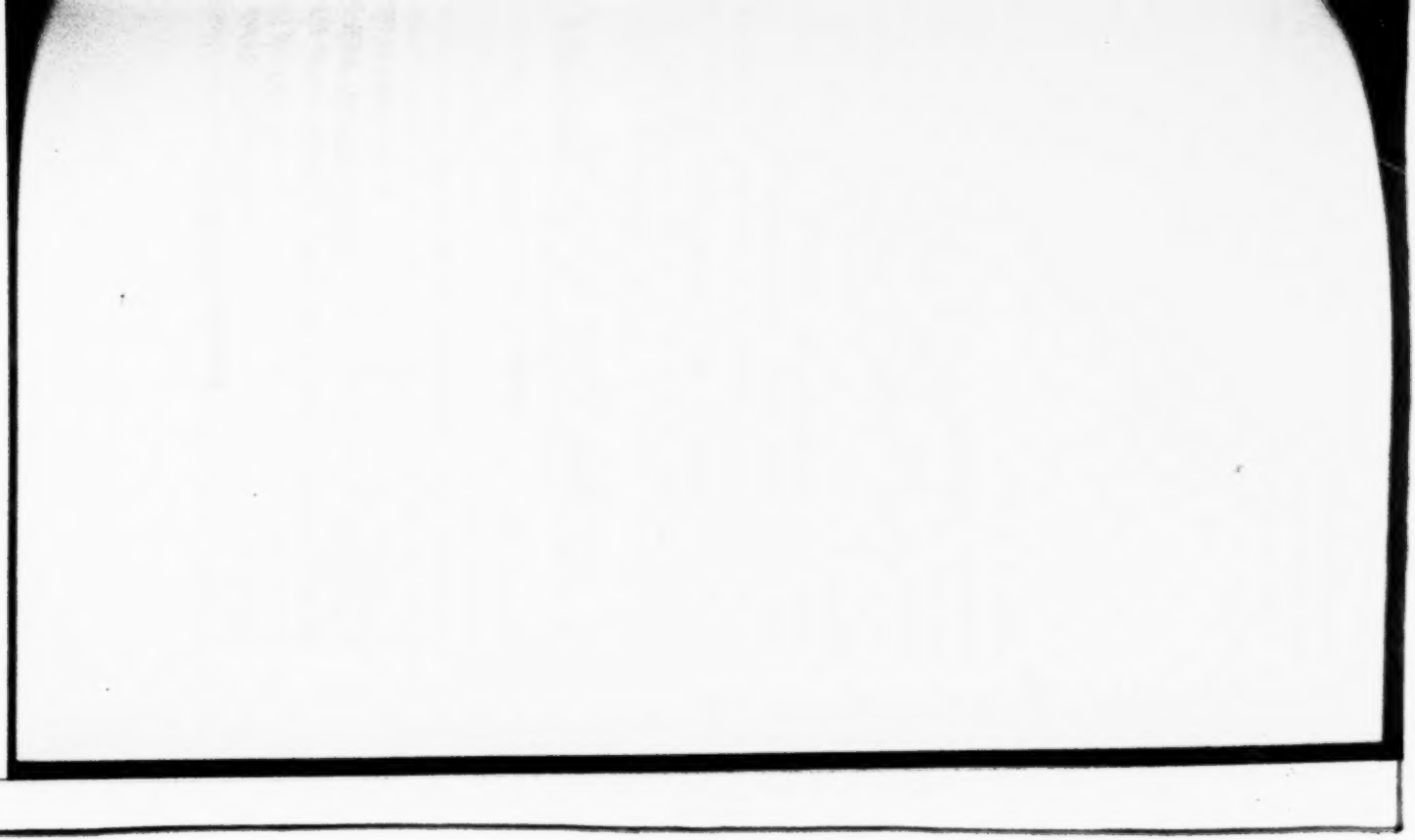

No. 135

Memo for petitioners, after argument, filed on Jan. 29, 1971
(not printed)

Memo for respondent, after argument, filed on Feb. 3, 1971
(not printed)

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ORGANIZATION FOR A BETTER AUSTIN ET AL. *v.* KEEFE

CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

No. 135. Argued January 20, 1971—Decided May 17, 1971

Respondent real estate broker applied for and obtained from the Illinois courts an injunction enjoining petitioners from distributing any literature in the City of Westchester, on the ground that their leaflets, critical of respondent's alleged "blockbusting" and "panic peddling" activities in the Austin area of Chicago, invaded respondent's right of privacy, and were coercive and intimidating rather than informative, thus not being entitled to First Amendment protection. *Held:* Respondent has not met the heavy burden of justifying the imposition of the prior restraint of petitioners' peaceful distribution of informational literature of the nature disclosed by this record. Pp. 4–5.

115 Ill. App. 2d 236, 253 N. E. 2d 276, reversed.

BURGER, C. J., delivered the opinion of the Court in which BLACK, DOUGLAS, BRENNAN, STEWART, WHITE, MARSHALL, and BLACKMUN, JJ., joined. HARLAN, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1970

Organization For a Better Austin et al., Petitioners, v. Jerome M. Keefe. } On Writ of Certiorari to the Appellate Court of Illinois, First District.

[May 17, 1971]

Mr. Chief Justice Burger delivered the opinion of the Court.

We granted the writ in this case to consider the claim that an order of the Circuit Court of Cook County, Illinois, enjoining petitioners from distributing leaflets anywhere in the town of Westchester, Illinois, violates petitioners' rights under the Federal Constitution.

Petitioner Organization for a Better Austin (OBA) is a racially integrated community organization in the Austin neighborhood of Chicago. Respondent is a real estate broker whose office and business activities are in the Austin neighborhood. He resides in Westchester, Illinois, a suburb of Chicago some seven miles from the Austin area.

OBA is an organization whose stated purpose is to "stabilize" the racial ratio in the Austin area. For a number of years the boundary of the Negro segregated area of Chicago has moved progressively west to Austin. OBA, in its efforts to "stabilize" the area—so it describes its program—has opposed and protested various real estate tactics and activities generally known as "blockbusting" or "panic peddling."

It was the contention of OBA that respondent had been one of those who engaged in such tactics, specifically

that he aroused the fears of the local white residents that Negroes were coming into the area and then, exploiting the reactions and emotions so aroused, was able to secure listings and sell homes to Negroes. OBA alleged that since 1961 respondent had from time to time actively promoted sales in this manner by means of flyers, phone calls, and personal visits to residents of the area in which his office is located, without regard to whether the persons solicited had expressed any desire to sell their homes. As the "boundary" marking the furthest westward advance of Negroes moved into the Austin area, respondent is alleged to have moved his office along with it.

Community meetings were arranged with respondent to try to persuade him to change his real estate practices. Several other real estate agents were prevailed on to sign an agreement whereby they would not solicit property, by phone, flyer or visit, in the Austin community. Respondent who has consistently denied that he is engaging in "panic peddling" or "blockbusting" refused to sign, contending that it was his right under Illinois law to solicit real estate business as he saw fit.

Thereafter, during September and October of 1967, members of petitioner organization distributed leaflets in Westchester describing respondent's activities. There was no evidence of picketing in Westchester. The challenged publications, now enjoined, were critical of respondent's real estate practices in the Austin neighborhood; one of the leaflets set out the business card respondent used to solicit listings, quoted him as saying "I only sell to Negroes," cited a Chicago Daily News article describing his real estate activities and accused him of being a "panic peddler." Another leaflet, of the same general order, stated that "When he signs the agreement, we stop coming to Westchester." Two of the leaflets requested recipients to call respondent at his home phone number and urge him to sign the "no

solicitation" agreement. On several days leaflets were given to persons in a Westchester shopping center. On two other occasions leaflets were passed out to some parishioners on their way to or from respondent's church in Westchester. Leaflets were also left at the doors of his neighbors. The trial court found that petitioners' "distribution of leaflets was on all occasions conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic, and did not precipitate any fights, disturbances or other breaches of the peace." One of the officers of OBA testified at trial that he hoped that respondent would be induced to sign the no-solicitation agreement by letting "his neighbors know what he was doing to us."

Respondent sought an injunction in the Circuit Court of Cook County, Illinois, on December 20, 1967. After an adversary hearing the trial court entered a temporary injunction enjoining petitioners "from passing out pamphlets, leaflets or literature of any kind, and from picketing, anywhere in the City of Westchester, Illinois."

On appeal to the Appellate Court of Illinois, First District, that court affirmed. It sustained the finding of fact that petitioners' activities in Westchester had invaded respondent's right of privacy, had caused irreparable harm, and were without adequate remedy at law. The Appellate Court appears to have viewed the alleged activities as coercive and intimidating, rather than informative and therefore as not entitled to First Amendment protection. The Appellate Court rested its holding on its belief that the public policy of the State of Illinois strongly favored protection of the privacy of home and family from encroachment of the nature of petitioners' activities.*

*The injunction is termed a "temporary" injunction by the Illinois courts. We have therefore considered whether we may properly decide this case. 28 U. S. C. § 1257. We see nothing in the record

It is elementary, of course, that in a case of this kind the courts do not concern themselves with the truth or validity of the publication. Under *Near* v. *Minnesota*, 283 U. S. 697 (1931), the injunction, so far as it imposes prior restraint on speech and publication, constitutes an impermissible restraint on First Amendment rights. Here, as in that case, the injunction operates not to redress alleged private wrongs, but to suppress, on the basis of previous publications, distribution of literature "of any kind" in a city of 18,000.

This Court has often recognized that the activity of peaceful pamphleteering is a form of communication protected by the First Amendment. *E. g., Martin* v. *City of Struthers*, 319 U. S. 141 (1943); *Schneider* v. *State*, 308 U. S. 147 (1939); *Lovell* v. *Griffin*, 303 U. S. 444 (1938). In sustaining the injunction, however, the Appellate Court was apparently of the view that petitioners' purpose in distributing their literature was not to inform the public, but to "force" respondent to sign a no-solicitation agreement. The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respond-

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which would indicate that the Illinois courts applied a less rigorous standard in issuing and sustaining this injunction than they would with any permanent injunction in the case. Nor is there any indication that the injunction rests on a disputed question of fact which might be resolved differently upon further hearing. Indeed, our reading of the record leads to the conclusion that the issuance of a permanent injunction upon termination of these proceedings will be little more than a formality. Moreover, the temporary injunction here, which has been in effect for over three years, has already had marked impact on petitioners' First Amendment rights. Although the record in this case is not such as to leave the matter entirely free from doubt we conclude we are not without power to decide this case. *Mills* v. *Alabama*, 384 U. S. 214 (1966); *Local 438, Construction Union, AFL–CIO* v. *Curry*, 371 U. S. 542 (1962).

ent's conduct by their activities; this is not fundamentally different from the function of a newspaper. See *Schneider* v. *State, supra; Thornhill* v. *Alabama,* 310 U. S. 88 (1940). Petitioners were engaged openly and vigorously in making the public aware of respondent's real estate practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability.

Any prior restraint on expression comes to this Court with a "heavy presumption" against its constitutional validity. *Carroll* v. *Princess Anne,* 393 U. S. 175, 181 (1968); *Bantam Books, Inc.* v. *Sullivan,* 372 U. S. 58, 70 (1963). Respondent thus carries a heavy burden of showing justification for the imposition of such a restraint. He has not met that burden. No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court. Designating the conduct as an invasion of privacy, the apparent basis for the injunction here, is not sufficient to support an injunction against peaceful distribution of informational literature of the nature revealed by this record. *Rowan* v. *United States Post Office Dept.,* 397 U. S. 728 (1970), relied on by respondent, is not in point; the right of privacy involved in that case is not shown here. Among other important distinctions, respondent is not attempting to stop the flow of information into his own household, but to the public. Accordingly, the injunction issued by the Illinois court must be vacated.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1970

Organization For a Better Austin et al., Petitioners, *v.* Jerome M. Keefe. } On Writ of Certiorari to the Appellate Court of Illinois, First District.

[May 17, 1971]

Mr. Justice Harlan, dissenting.

In deciding this case on the merits, the Court, in my opinion, disregards the express limitation of our appellate jurisdiction to "[f]inal judgments or decrees," 28 U. S. C. § 1257, and does so in a way which undermines the policies behind limiting our review to judgments "rendered by the highest court of a State in which a decision could be had," *ibid,* and interferes with Illinois' arrangements for the expeditious processing of litigation in its own state courts.

It is plain, and admitted by all, that the "temporary" or "preliminary" injunction entered by the Circuit Court of Cook County and affirmed by the Appellate Court, First District, is not a final judgment. Review of preliminary injunctions is a classic form of interlocutory appeal, which Congress has authorized in limited instances not including review by this Court of state decrees. See 28 U. S. C. §§ 1252, 1253; cf. 28 U. S. C. § 1292 (a)(1). Despite the seemingly absolute provision of the statute, the Court holds that this case is within the judicially created exception for instances in which the affirmance of the interlocutory order by the highest state court decides the merits of the dispute for all practical purposes, leaving the remaining proceedings in the lower courts as nothing more than a formality. See *Pope* v. *Atlantic Coast Line R. Co.,* 345 U. S. 379, 382 (1953); *Construc-*

tion Laborers' Local 438 v. *Curry*, 371 U. S. 542, 550–551 (1963); *Mills* v. *Alabama*, 384 U. S. 214, 217–218 (1966). The apparent, though unstated, justification for this is the petitioners' representation in this Court that they have no defense to offer other than their First Amendment contentions, which they assert the Illinois courts have decided against them on the merits. Pet., at 6.

Even assuming that the latter position is correct,* this case does not fit into the mold of the cases in which this Court has reviewed orders of state supreme courts affirming the grant of preliminary relief, for here the Illinois Supreme Court has never passed on the merits of petitioners' constitutional contentions. If this case were

*Settled Illinois law provides that "[i]t is not, of course, the purpose of a temporary injunction to decide controverted facts or the merits of the case," *Lonergan* v. *Crucible Steel Co. of America*, 37 Ill. 2d 599, 611, 229 N. E. 2d 536, 542 (1967), but "merely to preserve the last actual peaceable uncontested status which preceded the pending suit." *Consumers Digest, Inc.* v. *Consumer Magazine, Inc.*, 92 Ill. App. 2d 54, 61, 235 N. E. 2d 421, 425 (App. Ct., 1st Dist., 1968). "It is enough if [the applicant] can show that he raises a fair question as to the existence of the right which he claims and can satisfy the court that matters should be preserved in their present state until such questions can be disposed of." *Nestor Johnson Mfg. Co.* v. *Goldblatt*, 371 Ill. 570, 574, 21 N. E. 2d 723, 725 (1939). The granting of a preliminary injunction is committed to the sound discretion of the trial judge, and it is reviewable only for abuse of discretion. *Lonergan* v. *Crucible Steel Co. of America*, 37 Ill. 2d 599, 612, 229 N. E. 2d 536, 542 (1967).

In argument before the Illinois chancellor, petitioners' attorney stated:

"[w]e don't wish to go into lengthy argument on constitutional provisions at this time. We feel that it is only fair that both sides prepare briefs in preparation for a full hearing on the permanent injunction. And, to that end, we just want to point out that these are constitutional questions, on which we feel the law is abundantly clear, and that is a further reason why Your Honor in his discretion, should not see fit to issue a temporary injunction." Record, at 56.

permitted to return to the trial court for consideration of the merits of petitioners' contentions and the entry of final judgment, petitioners would have an appeal as of right directly to the Illinois Supreme Court if that judgment were adverse to them. Ill. Const. Art. 6, § 5; Ill. Sup. Ct. R. 301, 302 (a). That court would then have an opportunity to correct the errors, if any, in the lower court judgment; or if it failed to do so we would have the benefit of that court's views on the issues here presented. Such review by "the highest court of a State in which a decision could be had" is particularly important in the context of Illinois procedure, which places primary responsibility for review of constitutional contentions in the state Supreme Court. All appeals from final judgments in cases involving a constitutional question must be taken directly to that court, see Ill. Sup. Ct. R. 302 (a)(2); consequently the intermediate Appellate Court rarely has occasion to engage in constitutional adjudication.

To be sure, the Illinois Supreme Court, by denying petitioners' motion for leave to appeal from the order of the Appellate Court, had an opportunity to rule on the issue presented by this case and declined to do so. However, Illinois has a strong policy against Supreme Court review of interlocutory orders. Until recently the Supreme Court had no direct appellate jurisdiction over judgments of the Appellate Court on interlocutory appeals, but simply reviewed the issues presented by the subsequent final judgment. 6 C. Nichols, Illinois Civil Practice § 5998 (1962 rev. vol. H. Williams & M. Wingersky). Although interlocutory review is now available in the discretion of the Supreme Court, it is "not favored." Ill. Sup. Ct. R. 318 (b); see also Ill. Sup. Ct. R. 315 (a). We have ourselves often made a similar resolution of the competing interests in prompt correction of lower courts' errors on the one hand and in

expeditious processing of litigation to final judgment on the other. See R. Stern & E. Gressman, Supreme Court Practice § 4.19 (4th ed., 1969). Under today's decision, Illinois will have to surrender its judgment in these matters if it desires to interpose the state Supreme Court between the subordinate state courts and review by this Court, as the highest-state-court requirement permits it to do. If this Court would respect the final-judgment limitation on our jurisdiction, Illinois would not be put to this choice.

It is of course tempting to ignore the proper limitations on our power when the alternative is to delay correction of what the Court today holds was a flagrant error by lower courts. This is particularly true where, as here, a "temporary" injunction has been outstanding for a lengthy period. But the question is not whether we think our intervention in the dispute at this stage would be desirable—although with our overall docket running at about 4,000 cases a Term there is surely much to be said for giving each litigant only one bite at the apple. The policy judgment involved was expressly committed to Congress by Article III, § 2 of the Constitution, and Congress has spoken in § 1257.

I would respect that congressional judgment and dismiss the writ for lack of jurisdiction.